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Presidential Documents

Title 3—

The President

Proclamation 8599 of November 8, 2010

World Freedom Day, 2010

By the President of the United States of America

A Proclamation

The Berlin Wall once stood as a painful barrier between family and friends, a dark symbol of oppression and stifled liberties. On November 9, 1989, in a powerful affirmation of freedom, Germans from both sides of the wall joined to tear down the hated blockade. World Freedom Day commemorates the end of this icon of division; celebrates the courageous resolve of individuals who insisted upon a better future for themselves and their country; and marks the reunification of a city, a nation, and a people. This cherished day also calls upon us to reflect on our world anew and recognize that the work of freedom is never finished.

Our world has become increasingly interconnected, and more prosperous, cooperative, and free. We stand at a transformational moment in history, where there is tremendous potential not only to tear down walls, but also to build bridges between people separated by geography, cultures, and beliefs. Across the world, we have seen the power of the ballot box and the desire of people to break through artificial barriers and work to implement solutions to common challenges. Civil society and governments are coming together as never before to promote liberty, share knowledge, and protect human dignity.

With enduring bonds forged across decades, the democracies that emerged one by one from behind the Iron Curtain are now America's allies and partners, and today we jointly confront global challenges. Examples of the strength of conviction, these sovereign nations inspire all who still yearn to exercise their universal human rights. The 21st anniversary of the fall of the Berlin Wall is an occasion to renew our common commitment to advance the cause of world freedom in the 21st century.

The arc of history has shown that human destiny is what we make of it. Freedom has expanded across the globe because principled men and women have marched, spoken out, and demanded the rights and dignity that should be enjoyed by all humanity. Those nations that have already secured these liberties share a responsibility to uphold the light of freedom in other countries as well as in their own. On World Freedom Day, we rededicate ourselves to supporting democracy and the rule of law, to strengthening civil society, and to promoting the free exchange of information around the world. United in common purpose, we will continue to work towards the promise of a brighter future and a time when all peoples and nations enjoy the hope and peace of freedom.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 9, 2010, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, reaffirming our dedication to freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–28852
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Presidential Documents

Executive Order 13558 of November 9, 2010

Export Enforcement Coordination Center

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance United States foreign policy and protect the national and economic security of the United States through strengthened and coordinated enforcement of United States export control laws and enhanced intelligence exchange in support of such enforcement efforts, it is hereby ordered as follows:

Section 1. *Policy.* Export controls are critical to achieving our national security and foreign policy goals. To enhance our enforcement efforts and minimize enforcement conflicts, executive departments and agencies must coordinate their efforts to detect, prevent, disrupt, investigate, and prosecute violations of U.S. export control laws, and must share intelligence and law enforcement information related to these efforts to the maximum extent possible, consistent with national security and applicable law.

Sec. 2. *Establishment.* (a) The Secretary of Homeland Security shall establish, within the Department of Homeland Security for administrative purposes, an interagency Federal Export Enforcement Coordination Center (Center).

(b) The Center shall coordinate on matters relating to export enforcement among the following:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of Commerce;

(vi) the Department of Energy;

(vii) the Department of Homeland Security;

(viii) the Office of the Director of National Intelligence; and

(ix) other executive branch departments, agencies, or offices as the President, from time to time, may designate.

(c) The Center shall have a Director, who shall be a full-time senior officer or employee of the Department of Homeland Security, designated by the Secretary of Homeland Security. The Center shall have two Deputy Directors, who shall be full-time senior officers or employees of the Department of Commerce and the Department of Justice, designated by the Secretary of Commerce and the Attorney General, respectively, detailed to the Center and reporting to the Director. The Center shall also have an Intelligence Community Liaison, who shall be a full-time senior officer or employee of the Federal Government, designated by the Director of National Intelligence, and detailed or assigned to the Center.

(d) The Center shall have a full-time staff reporting to the Director. To the extent permitted by law, executive departments and agencies enumerated in subsection (b) of this section are encouraged to detail or assign their employees to the Center without reimbursement.

Sec. 3. *Functions.* The Center shall:

(a) serve as the primary forum within the Federal Government for executive departments and agencies to coordinate and enhance their export control

enforcement efforts and identify and resolve conflicts that have not been otherwise resolved in criminal and administrative investigations and actions involving violations of U.S. export control laws;

(b) serve as a conduit between Federal law enforcement agencies and the U.S. Intelligence Community for the exchange of information related to potential U.S. export control violations;

(c) serve as a primary point of contact between enforcement authorities and agencies engaged in export licensing;

(d) coordinate law enforcement public outreach activities related to U.S. export controls; and

(e) establish Government-wide statistical tracking capabilities for U.S. criminal and administrative export control enforcement activities, to be conducted by the Department of Homeland Security with information provided by and shared with all relevant departments and agencies participating in the Center.

Sec. 4. *Administration.* (a) The Department of Homeland Security shall operate and provide funding and administrative support for the Center to the extent permitted by law and subject to the availability of appropriations.

(b) The Director of the Center shall convene and preside at the Center's meetings, determine its agenda, direct the work of the Center, and, as appropriate to particular subject matters, organize and coordinate subgroups of the Center's members.

Sec. 5. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

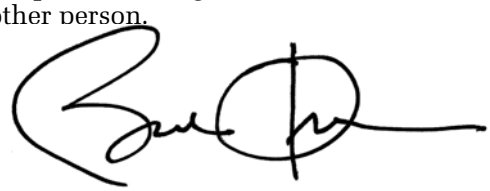
(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Nothing in this order shall be construed to provide exclusive or primary investigative authority to any agency. Agencies shall continue to investigate criminal and administrative export violations consistent with their existing authorities, jointly or separately, with coordination through the Center to enhance enforcement efforts and minimize potential for conflict.

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



THE WHITE HOUSE,
November 9, 2010.

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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.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. FSIS–2007–0039]

RIN 0583–AD33

Permission To Use Air Inflation of Meat Carcasses and Parts

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to provide that establishments that slaughter livestock or prepare livestock carcasses and parts may inflate carcasses and parts with air if they develop, implement, and maintain written controls to ensure that the procedure does not cause insanitary conditions or adulterate the product. FSIS is requiring establishments to incorporate these controls into their Hazard Analysis and Critical Control Point (HACCP) plans or Sanitation Standard Operating Procedures (Sanitation SOPs) or other prerequisite programs.

In addition, FSIS is amending its regulations to remove the approved methods for inflating livestock carcasses and parts by air and to remove the requirement that establishments submit requests to FSIS for approval of air inflation procedures not listed in the regulations. FSIS is also adding a paragraph in the regulations to make clear that the current prohibition against injecting compressed air into the skulls of cattle remains in force.

DATES: *Effective:* December 15, 2010.

FOR ADDITIONAL INFORMATION: Contact Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). Under this statute, FSIS protects the public by verifying that meat products are safe, wholesome, not adulterated, and properly labeled and packaged.

On May 24, 2010, FSIS proposed to amend the Federal meat inspection regulations concerning air inflation. The proposed rule explained that on October 3, 1970, the Federal Meat Inspection regulations were revised to prohibit inflation with air of carcasses or parts of carcasses (35 FR 15568). On September 5, 1989, FSIS modified the prohibition in 9 CFR 310.13(a) by providing for the use of several air inflation procedures that had been field tested and that the Agency found to be acceptable (54 FR 36756). The regulations required that establishments interested in the use of air inflation procedures other than the approved methods submit to FSIS a request for experimental testing of the unapproved procedure. The regulations also provided that if FSIS were to find a new method to be acceptable, it would modify its regulations to include the new method.

As FSIS stated in the proposed rule, the Agency's original intent in disallowing the use of air inflation was to prevent insanitary conditions from arising and to prevent the adulteration of carcasses or parts of carcasses. However, the Agency recognized in the 1989 final rule that air inflation procedures could be used in a sanitary manner without adulterating product and consequently approved the limited use of air inflation procedures.

Under a waiver from FSIS, Packerland Co. (also known as JBS Packerland) used an air inflation methodology to separate the brisket and round portions from beef carcasses to increase the efficiency of its fabrication. In July 2007, Packerland Co. petitioned FSIS to amend its regulations to allow for this air inflation methodology. In support of its petition, Packerland Co. presented aerobic bacteria plate count data that showed that the use of Packerland's air inflation procedure did not cause insanitary conditions or adulterate product.

Based on the Agency's accumulated experience with air inflation procedures and on its evaluation of Packerland's petition, FSIS decided to grant Packerland's petition and proposed to permit establishments that slaughter livestock carcasses and parts to inflate carcasses and parts with air if they develop, implement, and maintain written controls to ensure that the procedure does not cause insanitary conditions or adulterate product. FSIS proposed to require that establishments incorporate these controls into their HACCP plans or Sanitation SOPs or other prerequisite programs. FSIS also proposed to amend its regulations to remove the approved methods for inflating livestock carcasses and parts by air and to remove the requirement that establishments submit requests to FSIS for approval of air inflation procedures not listed in the regulations.

Comments and FSIS Response

The Agency received three comments on the proposal.

One trade association supported the proposed rule and stated that the proposed action will enhance slaughter house safety programs, reduce repetitive motion injuries, and create economic benefits through better use of employees. In addition, the commenter stated that the proposal will facilitate adoption of new air inflation technology.

A large corporation also supported the proposal. The commenter stated that air from air inflation procedures is present in the finished food at insignificant levels and does not have any technical or functional effect in that food after the use of those procedures. The commenter stated that, therefore, these procedures meet the definition of incidental additives as defined in 21 CFR 101.100(a)(3) and are exempt from labeling requirements.

The question presented in this rulemaking is whether FSIS should provide for air inflation in its regulations. How products produced using air inflation technology need to be labeled is a separate question that FSIS did not address in the proposed rule. Such product would not be required to be labeled to indicate that it has been produced using air inflation. In addition, FSIS does not agree that air used to inflate carcasses and parts

constitutes an incidental additive as defined in 21 CFR 101.100 (a)(3) because air is a gas mixture that is being used to separate muscle tissue, and there is no residual of any of the gases in the tissue after use.

An individual commenter stated that a reference in the preamble to the proposed rule to the disallowance of air injection into the skull of cattle appears to be incorrect. The comment pointed out that the reference should be 9 CFR 310.13 (a)(2)(iv)(C), not 9 CFR 310.13(a)(2)(iv)(D).

The Agency agrees that 9 CFR 310.13(a)(2)(iv)(C) is the correct citation.

Therefore, nothing presented by the comments would cause the Agency to not adopt the proposed rule.

The Final Rule

FSIS is amending 9 CFR 310.13(a) to permit establishments that slaughter livestock or prepare livestock carcasses and parts to inflate carcasses or parts of carcasses with air if they develop, implement, and maintain controls to ensure that those procedures do not cause insanitary conditions or adulterate product. Under the new rule, all methods of air inflation will be permitted if establishments develop, implement, and maintain controls to ensure that these procedures do not cause insanitary conditions or adulterate product. Therefore, FSIS is also removing the approved methods for inflating meat carcasses and parts from the regulations. For the same reason, the Agency is removing the requirement that establishments submit requests to FSIS for approval of air inflation procedures not listed in the regulations. Under this final rule, establishments that are using an approved air inflation procedure can continue to do so, but they will be required to incorporate their air inflation procedures into their HACCP plans or Sanitation SOPs or other prerequisite programs.

As part of their HACCP plans and hazard analysis, establishments are required to prepare a flow chart describing the steps of each process and product flow in the establishment (9 CFR 417.2(a)(2)). Under the final rule, if an establishment uses air inflation procedures, the flow chart will need to include those procedures. Under the HACCP regulations, establishments are also required to consider whether air inflation may make biological hazards, such as contamination with certain pathogens, reasonably likely to occur (9 CFR 417.2(a)(1)).

Also under the HACCP regulations, if an establishment determines that air inflation procedures do not introduce any hazards, it is to document the reasons for its determination in its decision-making documents (9 CFR 417.5). Under this final rule, if establishments that use air inflation maintain controls outside of their HACCP plans to ensure that air inflation procedures do not cause insanitary conditions or adulterate product, they are to incorporate such controls into their Sanitation SOPs or another prerequisite program.

FSIS will verify that establishments that choose to use air inflation procedures implement and maintain controls that are adequate and effective to ensure that the procedures do not cause insanitary conditions or adulterate product. The Agency will verify the effectiveness of these controls by reviewing establishment records and directly observing the air inflation procedures. It will also verify that establishments that use air inflation have incorporated their procedures for inflating meat carcasses and parts into their HACCP plan or Sanitation SOP or other prerequisite program. In addition, FSIS will assess whether these establishments verify on an ongoing basis that their controls are effectively preventing insanitary conditions and adulteration during air inflation.

This rule will provide establishments with more production options and will encourage the development of new technology without diminishing food safety.

The proposed rule noted that on January 12, 2004, FSIS amended 9 CFR 310.13(a)(2)(iv)(D) to prohibit the use of compressed air injection into the skull of cattle in conjunction with a captive bolt stunner (75 FR 28763). The 2004 rule also amended FSIS's humane slaughter regulations (9 CFR 313.15 (b)(2)(ii)) to prohibit the use of captive bolt stunners that deliberately inject compressed air into the cranium of cattle. In this final rule, FSIS is adding a new paragraph (310.13(b)(2)) to the regulations stating that establishments may not inject compressed air into the skulls of cattle in conjunction with a captive bolt stunner to hold the animal still for dressing operations. The Agency is adding this paragraph to clarify that the prohibition against injecting compressed air into the skulls of cattle remains in force and to ensure that the prohibition is retained in both sections of the FSIS regulations that apply to air injection procedures.

Executive Order 12866 and the Regulatory Flexibility Act

This action has been reviewed for compliance with Executive Order 12866. The Office of Management and Budget has designated this proposed rule "non-significant" and therefore has not reviewed it.

Meat Industry Overview

Excluding slaughtering only and raw-ground meat processing only, there are about 2,818 federally inspected establishments, which, under this rule, could adopt air inflation technology to process raw-not-ground meat.[1] Furthermore, of the 2,818 federally inspected establishments, approximately 1,541 are considered very small (with less than 10 employees), 1,153 are considered small (with between 10 and 500 employees), and 124 are considered large (with more than 500 employees).[2]

Estimated Benefits

Allowing for greater ease in introducing new air inflation technology and procedures will likely spur technological innovation that will provide this new technology to additional meat establishments. Greater technological innovation more widely used by industry would likely result in increased net higher-value meat yields, which would lead to consumer savings.

Estimated Costs

Under this rule, establishments will be required to incorporate their controls for air inflation procedures into their HACCP plan or Sanitation SOP or other prerequisite program. FSIS does not anticipate any new costs associated with this rule because the HACCP regulations already require that establishments consider the steps of each process, including procedures such as air inflation, as part of their hazard analysis and HACCP plan. Because the use of air inflation procedures is voluntary, establishments would not incur any costs associated with the use of air inflation procedures unless they expected to realize net benefits from the use of the new technology. Therefore, this rule will result in negligible costs but would provide benefits.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), the FSIS Administrator has examined the economic implications of the rule and has determined that it will not have a significant impact on a substantial number of small entities. Under the rule, no establishments are required to use air inflation procedures to inflate meat carcasses or parts, and establishments are only likely to do so

[1] Performance Based Inspection System. 2009.

[2] *Ibid.*

if they would expect to realize profits by employing such methods.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Paperwork Requirements

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that the information collection related to HACCP plans, Sanitation SOPs, and prerequisite programs has been approved by OMB under OMB Control Number 0583–0103.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to government information and services, and for other purposes.

Executive Order 13175

The policies contained in this rule do not have Tribal Implications that preempt Tribal Law.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

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Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2010_Interim_&_Final_Rules_Index.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_&_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 310

Meat inspection.

■ Accordingly, the Food Safety and Inspection Service amends 9 CFR part 310 as follows:

PART 310—POST-MORTEM INSPECTION

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Amend § 310.13 by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), and adding paragraph (b)(2) to read as follows:

§ 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a) Establishments that slaughter livestock and prepare livestock carcasses and parts may inflate carcasses or parts of carcasses with air if they develop, implement, and maintain controls to ensure that the air inflation procedure does not cause insanitary conditions or adulterate product. Establishments shall incorporate these controls into their HACCP plans or Sanitation SOPs or other prerequisite programs.

(b)(1) * * *

(2) Injecting compressed air into the skulls of cattle in conjunction with a captive bolt stunner to hold the animal still for dressing operations is prohibited.

* * * * *

Done at Washington, DC, on October 29, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–28650 Filed 11–12–10; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD65

Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending its deposit insurance regulations to implement section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] providing for unlimited deposit insurance for "noninterest-bearing transaction accounts" for two years starting December 31, 2010.

DATES: *Effective Date:* The final rule is effective December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Supervisory Counsel, Legal Division (202) 898–7349 or *jdinuzzo@fdic.gov;* Mike Figge, Honors Attorney, Legal Division (202) 898–6750 or *mfigge@fdic.gov;* or James V. Deveney, Chief, Deposit Insurance Section, Division of Supervision and Consumer Protection (202) 898–6687 or *jdeveney@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On September 30, 2010, the FDIC published a proposed rule ("proposed rule") to implement section 343 of the Dodd-Frank Act ("Section 343").[2] Section 343 amended the deposit insurance provisions of the FDI Act (12 U.S.C. 1821(a)(1)) to provide temporary

[1] Public Law 111–203 (July 21, 2010).

[2] 75 FR 60341 (Sept. 30, 2010).

separate insurance coverage for noninterest-bearing transaction accounts. In summary, the proposed rule: Followed the Section 343 definition of *noninterest-bearing transaction account;* identified and discussed the differences between Section 343 and the FDIC's Transaction Account Guarantee Program ("TAGP"); explained the separate deposit insurance available for noninterest-bearing transaction accounts under Section 343; proposed disclosure and notice requirements as part of the implementation of Section 343; announced that, because of this Congressional action, the FDIC would not be extending the TAGP beyond its sunset date of December 31, 2010; and requested comments on all aspects of the proposed rule.

II. Comments on the Proposed Rule

The comment period on the proposed rule ended on October 15, 2010. The FDIC received ninety-three comments from trade associations, insured depository institutions ("IDIs") and law firms, among others. In particular, the FDIC received eighty-four comments from state-bar affiliated associations and five comments from banking and other associations. The remaining four comments were from individual IDIs.

Trade associations and bankers commented that the proposed rule reflects an accurate interpretation of Section 343. A number of banks and state bar associations commented that the exclusion of Interest on Lawyer Trust Accounts ("IOLTAs") from Section 343, and consequently the proposed rule, was the result of an inadvertent omission on the part of Congress. These comments referenced a pending bi-partisan Senate bill to include IOLTAs in the Section 343 definition of noninterest-bearing transaction account. The commenters oppose the proposed rule's requirement that IDIs notify IOLTA and negotiable order of withdrawal ("NOW") account holders of changes in the deposit insurance scheme before Congress has the opportunity to amend Section 343 to include IOLTAs. Their comments reflect a concern that the exclusion of IOLTA and NOW accounts from the definition of noninterest-bearing transaction account will cause large IOLTA and NOW account depositors to spread these deposits across multiple IDIs to ensure full deposit insurance coverage or to place their deposits with institutions deemed "too big to fail." Their comments also reflect a concern that failure to provide unlimited insurance to IOLTA and NOW accounts will significantly restrict community lending.

One commenter requested that the final rule clarify whether the notice requirements apply to all depositors who hold NOW accounts in IDIs participating in the TAGP, or only to depositors who may be affected by the change in deposit insurance coverage. According to this comment letter, most NOW account holders will not be affected by the change because they have less than the standard maximum deposit insurance amount of $250,000 ("SMDIA") and remain fully insured should an IDI default. Another commenter requested clarification that one notice per account, rather than one notice per account holder, will satisfy the notice requirement. Similarly, when depositors have multiple accounts that are affected, the commenter requested clarification that compliance with the notice requirement is achieved by sending one notice which lists all affected accounts along with the account holder's statement. Another comment letter requested clarification that the language included in the proposed rule under 12 CFR 330.16(c)(1) is language that may be used to comply with the notice requirement.

Several commenters expressed concerns over the unintended consequences of providing unlimited deposit insurance coverage for noninterest-bearing transaction accounts, contending that providing such coverage for these accounts promotes moral hazard. Four commenters suggested charging a separate assessment, in addition to the normal assessment rates, to address what they deem to be disproportionately high assessment rates on banks with a relatively low level of noninterest-bearing transaction accounts. One commenter requested clarification on how the FDIC intends to treat official checks for deposit insurance purposes under the proposed rule, in light of the provision in the FDIC's current deposit insurance regulations dealing with negotiable instruments,12 CFR 330.5(b)(4)(i).

Finally, one commenter requested clarification that the absence of a contract interest rate will determine whether an account qualifies for unlimited deposit-insurance coverage. Likewise, the commenter requested confirmation that interest-bearing accounts may be converted to noninterest-bearing accounts after December 31, 2010, and still obtain unlimited insurance.

III. The Final Rule

Definition of Noninterest-Bearing Transaction Account

As in the proposed rule, the final rule follows the definition of noninterest-bearing transaction account in Section 343. Section 343 defines a noninterest-bearing transaction account as "a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the IDI does not reserve the right to require advance notice of an intended withdrawal." One commenter on the proposed rule suggested that the FDIC define a depositor's balance in a noninterest-bearing transaction account as the "average balance collected within the insured account over the past 30 days" prior to the date of failure of the IDI. The FDIC believes this definition would be inconsistent with the definition of noninterest-bearing transaction account in Section 343 and would lead to depositor confusion and uncertainty as to the extent of deposit insurance coverage available on noninterest-bearing transaction accounts.

The Section 343 definition of noninterest-bearing transaction account is similar to the definition of that term in the TAGP, but it includes no interest-bearing accounts. The Section 343 definition of noninterest-bearing transaction account encompasses only traditional, noninterest-bearing demand deposit (or checking) accounts that allow for an unlimited number of deposits and withdrawals at any time, whether held by a business, an individual or other type of depositor. Unlike the definition of noninterest-bearing transaction account in the TAGP, the Section 343 definition of noninterest-bearing transaction account does not include NOW accounts (regardless of the interest rate paid on the account) or IOLTAs. Therefore, under the final rule, neither NOW accounts nor IOLTAs are within the definition of noninterest-bearing transaction account. Also, like the TAGP, the final rule does not include money market deposit accounts ("MMDAs") within the definition of noninterest-bearing transaction account.

As noted in the comment summary, the FDIC received numerous comments from law firms, IDIs, attorney trade

groups and others requesting that the FDIC either postpone issuance of the final rule or exclude from the final rule the requirement that IDIs currently participating in the TAGP notify IOLTA customers that, beginning January 1, 2011, IOLTAs no longer will be eligible for full deposit insurance coverage. The FDIC believes it is critically important for depositors to have a clear understanding of the deposit insurance rules before placing or retaining deposits at an FDIC-insured institution. As a result of the passage of the Dodd-Frank Act, the temporary full protection currently afforded to IOLTAs at IDIs participating in the TAGP will terminate on January 1, 2011, and the FDIC must ensure that IOLTA customers know about this change. If, as the commenters suggest, Congress acts before December 31, 2010, to add IOLTAs to Section 343, thus providing temporary full coverage for these accounts, the FDIC will act quickly to notify IDIs of the statutory change and explain how to respond to this change in complying with the disclosure requirements in the final rule.

Importantly, under the FDIC's general deposit insurance rules, IOLTAs may qualify for "pass-through" deposit insurance coverage, so long as the regulatory requirements are met. 12 CFR 330.7. That means each client for whom a law firm holds funds in an IOLTA may be insured up to $250,000 for his or her funds. In addition, the accrued interest to which a legal services entity or program is entitled may be separately insured for $250,000. For example, if a law firm maintains an IOLTA with $250,000 attributable to Client A, $150,000 to Client B and $75,000 to Client C, and the accrued interest of $5,000 is payable to a legal services program, the account likely would be fully insured. If the clients or the legal services entity have other funds at the same IDI, those funds would be added to their respective ownership interest in the IOLTA for insurance coverage purposes. But, coverage is available, generally, on a per-client basis; thus, a generous amount of deposit insurance coverage is available for IOLTAs, absent the availability of unlimited coverage for IOLTAs under either the TAGP or Section 343.

Some commenters noted that, pursuant to Dodd-Frank Act revisions to the Federal Deposit Insurance Act, the FDIC would not have the authority to extend the TAGP beyond that program's sunset date of December 31, 2010. The FDIC agrees with this conclusion. Therefore, in response to comments that the FDIC extend the TAGP, so that IOLTAs would continue to be fully protected, the FDIC does not have the statutory authority to do so. Likewise, in response to comments that the FDIC expand the final rule to include IOLTAs, the Dodd-Frank Act would not permit such an expansion, given that the Section 343 definition of noninterest-bearing transaction excludes accounts that may pay interest.

One trade group suggested that the FDIC undertake a study of the benefits and costs of a permanent self-supporting, and optional insurance program for qualifying accounts above the standard insurance limit. The FDIC will consider this suggestion.

As under the TAGP, under the final rule, whether an account is noninterest-bearing is determined by the terms of the account agreement and not by the fact that the rate on an account may be zero percent at a particular point in time. For example, an IDI might offer an account with a rate of zero percent except when the balance exceeds a prescribed threshold. Such an account would not qualify as a noninterest-bearing transaction account even though the balance is less than the prescribed threshold and the interest rate is zero percent. Under the final rule, at all times, the account would be treated as an interest-bearing account because the account agreement provides for the payment of interest under certain circumstances. On the other hand, as under the TAGP, the waiving of fees would not be treated as the earning of interest. For example, IDIs sometimes waive fees or provide fee-reducing credits for customers with checking accounts. Under the final rule, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

One commenter on the proposed rule asked that the FDIC clarify that "rewards programs" offered by IDIs on non-interest checking accounts also would not prevent an account from meeting the definition of noninterest-bearing transaction account under the final rule. Generally, the FDIC will look to current requirements and interpretations under Part 329 of its regulations (*Interest on Deposits,* 12 CFR part 329) and such interpretations under Regulation Q of the Board of Governors of the Federal Reserve System (12 CFR part 217) to determine whether rewards provided in connection with transaction accounts will be considered interest paid on the account and, thus, disqualify an account for treatment as a noninterest-bearing transaction account.

The same commenter requested that the FDIC confirm that interest-bearing accounts may be converted to noninterest-bearing checking accounts after December 31, 2010, and still obtain the benefits of unlimited FDIC coverage. Such account would be eligible for treatment as a noninterest-bearing transaction account as long as, under the modified deposit agreement, the depositor may not earn interest on the account.

This same principle for determining whether a deposit account qualifies as a noninterest-bearing transaction account will apply when IDIs no longer are prohibited from paying interest on demand deposit accounts. Pursuant to section 627 of the Dodd-Frank Act, as of July 21, 2011 (one year after the enactment date of the Dodd-Frank Act), IDIs no longer will be restricted from paying interest on demand deposit accounts. At that time, demand deposit accounts offered by IDIs that allow for the payment of interest will not satisfy the definition of a noninterest-bearing transaction account. As discussed below, under the final rule, IDIs are required to inform depositors of any changes in the terms of an account that will affect their deposit insurance coverage under this new provision of the deposit insurance rules.

As under the TAGP, the final rule's definition of noninterest-bearing transaction account encompasses "official checks" issued by IDIs. Official checks, such as cashier's checks and money orders issued by IDIs, are "deposits" as defined under the FDI Act (12 U.S.C. 1813(l)) and part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) is the insured party. Also, as a clarifying point made in one of the comments received on the proposed rule, if an official check is negotiated to a third party, the FDIC would recognize that person as the insured party, subject to certain requirements. 12 CFR 330.5(b)(4). Because official checks meet the definition of a noninterest-bearing transaction account, the payee (or the party to whom the payee has endorsed the check) would be insured for the full amount of the check upon the failure of the IDI that issued the official check.

Under the FDIC's rules and procedures for determining account balances at a failed IDI (12 CFR 360.8), funds swept (or transferred) from a deposit account to either another type of deposit account or a non-deposit account are treated as being in the account to which the funds were transferred prior to the time of failure. So, for example, if pursuant to an

agreement between an IDI and its customer, funds are swept daily from a noninterest-bearing transaction account to an account or product (such as a repurchase agreement) that is not a noninterest-bearing transaction account, the funds in the resulting account or product would not be eligible for full insurance coverage. This is how sweep account products are treated under the TAGP and under the final rule.

As under the TAGP, however, the final rule includes an exception from the treatment of swept funds in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a MMDA. Often referred to as "reserve sweeps," these products entail an arrangement in which a single deposit account is divided into two sub-accounts, a transaction account and an MMDA. The amount and frequency of sweeps are determined by an algorithm designed to minimize required reserves. In some situations customers may be unaware that this sweep mechanism is in place. Under the final rule, the FDIC will consider such accounts noninterest-bearing transaction accounts. In response to a comment on the proposed rule that treating such accounts as noninterest-bearing transaction accounts is contrary to Section 343, the FDIC notes that these are single accounts divided into sub-accounts, on neither of which the IDI pays interest. Considering "reserve sweep accounts" to be noninterest-bearing transaction accounts also is consistent with the treatment of such accounts under the FDIC's regulations on the treatment of sweep accounts upon the failure of an IDI. 12 CFR 360.8. Apart from this exception for "reserve sweeps," MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

Insurance Coverage

As noted in the proposed rule, pursuant to Section 343, all funds held in noninterest-bearing transaction accounts will be fully insured, without limit. As also specifically provided for in Section 343, this unlimited coverage is separate from, and in addition to, the coverage provided to depositors with respect to other accounts held at an IDI. This means that funds held in noninterest-bearing transaction accounts will not be counted in determining the amount of deposit insurance on deposits held in other accounts, and in other rights and capacities, at the same IDI. Thus, for example, if a depositor has a $225,000 certificate of deposit and a no-interest checking account with a balance of $300,000, both held in a single ownership capacity, he or she would be fully insured for $525,000 (plus interest accrued on the CD), assuming the depositor has no other single-ownership funds at the same institution. First, coverage of $225,000 (plus accrued interest) would be provided for the certificate of deposit as a single ownership account (12 CFR 330.6) up to the SMDIA of $250,000. Second, full coverage of the $300,000 checking account would be provided separately, despite the checking account also being held as a single ownership account, because the account qualifies for unlimited separate coverage as a noninterest-bearing transaction account.

One issue raised during the comment period is how the FDIC will apply the new Dodd-Frank coverage provision to determine the amount of insurance coverage available for revocable trust accounts. Coverage for revocable trust accounts, in general, is based on the number of "eligible" beneficiaries named in the account. 12 CFR 330.10. The specific question is how the FDIC will "count up" the number of eligible beneficiaries in determining revocable trust account coverage for an account owner who has multiple revocable trust accounts, including one or more such accounts that would qualify as noninterest-bearing transaction accounts under the Dodd-Frank provision. For example, if a depositor has an *interest-bearing* account with a balance of $400,000 payable to a niece and a qualifying noninterest-bearing transaction account with a balance of $200,000 payable to a friend, how much coverage would be available for the accounts? To make this deposit insurance calculation, the FDIC would first determine the total number of different beneficiaries the account owner has named in all revocable trust accounts (both interest-bearing and noninterest-bearing) at the same IDI. In this example, there are two (the niece and the friend). We would then multiply that number times the SMDIA of $250,000 to determine the maximum coverage available on the account owner's revocable trust accounts. In this example, the amount is $500,000. We then would apply that amount to the total balance of the account owner's interest-bearing revocable trust accounts. Here, because that amount is $400,000, it would be fully covered. The balance of the noninterest-bearing transaction account (in this case, $200,000) would be separately and fully covered under the final rule.

No Opting Out

Under the TAGP, IDIs could choose not to participate in the program. Because Section 343 of the Dodd-Frank Act provides Congressionally mandated deposit insurance coverage, IDIs are not required to take any action (*i.e.,* opt in or opt out) to obtain separate coverage for noninterest-bearing transaction accounts. From December 31, 2010, through December 31, 2012, noninterest-bearing transaction accounts at *all* IDIs will receive this temporary deposit insurance coverage. One commenter complained that the proposed rule did not allow IDIs to opt out of the temporary unlimited coverage for noninterest-bearing transaction accounts under Dodd-Frank. We note that, unlike under the TAGP, Section 343 does not allow IDIs to opt out of this statutory provision.

No Separate Assessment

The FDIC imposes a separate assessment, or premium, on IDIs that participate in the TAGP.[3] The FDIC will not charge a separate assessment for the insurance of noninterest-bearing transaction accounts pursuant to Section 343. The FDIC will take into account the cost for this additional insurance coverage in determining the amount of the deposit insurance assessment the FDIC charges IDIs under its risk-based assessment system.[4] Four comments from trade groups and IDIs suggested that the FDIC charge more for the additional coverage on noninterest-bearing transaction accounts similar to the way additional coverage is charged for under the TAGP. The proposed rule was not intended to address assessment issues, but the FDIC will take this comment into consideration when considering future changes to the assessment rate system. The FDIC notes, however, that the deposits covered by the TAGP were not defined as insured deposits. In contrast, Congress has specifically determined that noninterest-bearing transaction accounts *are* fully insured deposits.

Disclosure and Notice Requirements

The final rule includes disclosure and notice requirements as part of the implementation of Section 343. As indicated in the proposed rule, the purpose of these requirements is to ensure that depositors are aware of and understand what types of accounts will be covered by this temporary deposit insurance coverage for noninterest-bearing transaction accounts. As in the proposed rule, the final rule includes

[3] 12 CFR 370.7.

[4] 12 CFR part 327.

three such requirements. As explained in detail below: (1) IDIs must post a prescribed notice in their main office, each branch and, if applicable, on their Web site; (2) IDIs currently participating in the TAGP must notify NOW account depositors (that are currently protected under the TAGP because of interest rate restrictions on those accounts) and IOLTA depositors that, beginning January 1, 2011, those accounts no longer will be eligible for unlimited protection; and (3) IDIs must notify customers individually of any action they take to affect the deposit insurance coverage of funds held in noninterest-bearing transaction accounts.

1. Posted Notice

The final rule requires each IDI to post, prominently, a copy of the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site. In response to comments received on the proposed rule, this notice has been revised from the notice in the proposed rule to make it more concise and reader-friendly:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It does *not* include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, money-market deposit accounts, and Interest on Lawyers Trust Accounts ("IOLTAs").

For more information about temporary FDIC insurance coverage of transaction accounts, *visit www.fdic.gov.*

2. Notice to Depositors Protected Under the TAGP But Not Under the Dodd-Frank Provision

As discussed above, through December 31, 2010, low-interest NOW accounts and all IOLTAs are protected in full at IDIs participating in the TAGP. These accounts, however, are not eligible for unlimited deposit insurance coverage under the Dodd-Frank provision. Thus, starting January 1, 2011, all NOW accounts and IOLTAs will be insured under the general deposit insurance rules and will no longer be eligible for unlimited protection. Because of the potential depositor confusion about this change in the FDIC's treatment of NOWs and IOLTAs, the final rule requires IDIs currently participating in the TAGP to provide individual notices to depositors with NOW accounts currently protected in full under the TAGP and IOLTAs that those accounts will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts. IDIs are required to provide such notice to applicable depositors by mail no later than December 31, 2010. To comply with this requirement, IDIs may use electronic mail for depositors who ordinarily receive account information in this manner. The notice may be in the form of a copy of the notice required to be posted in IDI main offices, branches and on Web sites.

One commenter asked that the FDIC address certain specifics about complying with this notice requirement. In response to that comment: (1) As to joint accounts protected under the TAGP as of December 31, 2010, IDIs need only mail the notice to the address designated on the account; (2) if depositors have more than one affected account, one notice is sufficient if it identifies all the applicable accounts; and (3) the notice mailed to affected depositors may be in the form of the "posting" notice in § 330.16(c) (1) of the final rule.

Several commenters requested that this notice requirement either be eliminated, limited to NOW account owners with balances over the SMDIA or postponed until a date after the effective date of December 31, 2010. The FDIC has not adopted these suggestions because the Dodd-Frank coverage provision becomes effective on December 31, 2010; thus, starting January 1, 2011, low-interest NOW accounts and IOLTAs at IDIs participating in the TAGP no longer will be eligible for unlimited protection. As noted, the FDIC believes it is critical that depositors understand the current deposit insurance rules in placing or retaining funds at FDIC-insured institutions.

3. Notice To Sweep Account and Other Depositors Whose Coverage on Noninterest-Bearing Transaction Accounts Is Affected by an IDI Action

Under the TAGP regulations, if an IDI offers an account product in which funds are automatically transferred, or "swept," from a noninterest-bearing transaction account to another account (such as a savings account) or bank product that does not qualify as a noninterest-bearing transaction account, it must inform those customers that, upon such transfer, the funds will no longer be fully protected under the TAGP. As in the proposed rule, the final rule contains a similar, though somewhat more expansive, requirement, mandating that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts. This notice requirement is intended primarily to apply when IDIs begin paying interest on demand deposit accounts, as will be permitted beginning July 21, 2011, under section 627 of the Dodd-Frank Act (discussed above). Thus, under the final rule's notice requirements, if an IDI modifies the terms of its demand deposit account agreement so that the account may pay interest, the IDI must notify affected customers that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account. Though such notifications are mandatory, the final rule does not impose specific requirements regarding the form of the notice. Rather, the FDIC expects IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing depositors of changes to their account agreements.

One commenter on the proposed rule recommended that the FDIC issue additional guidance on the implementation of Section 343. The FDIC will consider publishing such guidance if it seems helpful to do so.

IV. Regulatory Analysis and Procedure

A. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. Section 4802(b)) requires, subject to certain exceptions, that regulations imposing additional reporting, disclosure or other requirements take effect on the first day of the calendar quarter after publication of the final rule. One of the statutory exceptions to this requirement is when the regulation is required to take effect on a date other than on the first day of the calendar quarter after publication of the final rule. The effective date of Section 343 is December 31, 2010. Thus, the effective date of the final rule is December 31, 2010.

B. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid Office of Management and Budget ("OMB") control number. This final rule contains disclosure requirements, some of which implicate PRA as more fully explained below. In the proposed rule, the Board announced that the TAGP will not continue beyond December 31, 2010, thereby eliminating the need for an associated, currently approved information collection. Consequently, the FDIC will discontinue its information titled "Transaction Account Guarantee Extension," OMB No. 3064–0170.

The new disclosure requirements are contained in § 330.16(c)(1), (2) and (3). More specifically, § 330.16(c)(1) requires that each IDI post a "Notice of Changes in Temporary FDIC Insurance Coverage for Transaction Accounts" in the lobby of its main office and domestic branches and, if it offers Internet deposit services, on its Web site; § 330.16(c)(2) requires IDIs currently participating in the TAGP to provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs are not eligible for unlimited coverage under the new temporary insurance category for noninterest-bearing transaction accounts; and § 330.16(c)(3) requires that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts.

The disclosure requirement in § 330.16(c)(1) would normally be subject to PRA. However, because the FDIC has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included" within the definition of "collection of information." 5 CFR 1320.3(c)(2). Therefore, the FDIC is not submitting the § 330.16(c)(1) disclosure to OMB for review.

The disclosure requirement in § 330.16(c)(2) provides that IDIs currently participating in the TAGP provide individual notices to affected depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts. The estimated burden for this new disclosure requirement has been added to the burden for an existing information collection, OMB No. 3064–0168, currently entitled SWEEP Accounts: Disclosure of Deposit Status. In conjunction with the revision of OMB No. 3064–0168, the FDIC has requested permission to modify the title of the collection as more fully explained below.

The disclosure requirement in § 330.16(c)(3) expands upon a similar, pre-existing requirement for sweep accounts offered by IDIs participating in the TAGP. The existing disclosure requirement is approved under OMB No. 3064–0168. The expanded disclosure requirement is mandatory for all IDIs, although institutions retain flexibility regarding the form of the notice. Therefore, in conjunction with publication of this final rule, the FDIC, on September 30, 2010, submitted to OMB a request to revise OMB No. 3064–0168 to reflect the estimated burden associated with the expanded disclosure requirement and to modify the title of the collection to "Disclosure of Deposit Status" to more accurately reflect the broader application of the requirement. This final rule results in no changes to the previously submitted burden estimates.

The estimated burden for the new disclosure under §§ 330.16(c)(2) and (3) is as follows:

Title: "Disclosure of Deposit Status.".

Affected Public: Insured depository institutions.

OMB Number: 3064–0168.

Estimated Number of Respondents:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—7,830.

Disclosure to NOW account and IOLTA depositors of change in insurance category—6,249.

Frequency of Response:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—on occasion (average of once per year per bank).

Disclosure to NOW account and IOLTA depositors of change in insurance category—once.

Average Time per Response:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—8 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—8 hours.

Estimated Annual Burden:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—62,640 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—49,992 hours.

Total Annual Burden—112,632 hours.

C. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this final rulemaking or certify that the final rule does not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be "small entities." The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2010, there were 4,294 IDIs that were considered small entities. A total of 1,121 of these institutions do not participate in the TAGP and receive additional insurance coverage under the final rule. Currently 3,173 small IDIs participate in the TAGP. Within this group of small institutions, 618, or 19.5 percent, did not have TAGP eligible deposits as of the June 2010 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, "June 2010 Call Reports"); thus, they were not required to pay the fee currently assessed for participation in the TAGP. As to the remaining 2,555 small entities that had TAGP eligible deposits as of the June 2010 Call Reports, they will no longer be assessed a fee after the termination of the TAGP, and they will not be charged a separate assessment for the new deposit insurance coverage.

The FDIC has determined that under the final rule, the economic impact on small entities will not be significant for the following reasons. Because there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343 of the Dodd-Frank Act, small entities currently assessed fees for participation in the TAGP will realize an average annual cost savings of $2,373 per institution. All other small entities, whether they are currently in the TAGP or not, will gain additional insurance coverage with no direct cost. The FDIC asserts that the economic benefit of additional insurance coverage and coverage extension until 2013 outweighs any future costs associated with the temporary insurance of noninterest-bearing transaction accounts.

With respect to amending the disclosures related to Section 343, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they

currently pay a fee) is de minimis in nature and is outweighed by the economic benefit of additional insurance coverage.

Accordingly, the final rule does not have a significant economic impact on a substantial number of small entities.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Small Business Regulatory Enforcement Fairness Act

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

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner, and has made revisions to the proposed rule in response to commenter concerns seeking clarification of the application of the deposit insurance rules.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In § 330.1, paragraph (r) is added to read as follows:

§ 330.1. Definitions.

* * * * *

(r) *Noninterest-bearing transaction account* means a deposit or account maintained at an insured depository institution—

(1) With respect to which interest is neither accrued nor paid;

(2) On which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(3) On which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.

* * * * *

■ 3. New § 330.16 is added to read as follows:

§ 330.16 Noninterest-bearing transaction accounts.

(a) *Separate insurance coverage.* From December 31, 2010, through December 31, 2012, a depositor's funds in a "noninterest-bearing transaction account" (as defined in § 330.1(r)) are fully insured, irrespective of the SMDIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured depository institution.

(b) *Certain swept funds.* Notwithstanding its normal rules and procedures regarding sweep accounts under 12 CFR 360.8, the FDIC will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) *Disclosure and notice requirements.* (1) Each depository institution that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, money-market deposit accounts, and Interest on Lawyers Trust Accounts ("IOLTAs").

For more information about temporary FDIC insurance coverage of transaction accounts, visit *www.fdic.gov*.

(2) Institutions participating in the FDIC's Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program and to depositors with Interest on Lawyer Trust Accounts that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection. This notice must be provided to such depositors no later than December 31, 2010.

(3) If an institution uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under this section, the institution must notify affected customers and clearly advise them, in writing, that such actions will affect their deposit insurance coverage.

Dated at Washington DC, this 9th day of November 2010.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28627 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4 and 10

[CBP Dec. 10–33]

Technical Corrections to Customs and Border Protection Regulations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. Through this review process, CBP discovered a number of discrepancies. This document amends various sections of title 19 of the Code of Federal

Regulations to remedy those discrepancies.

DATES: The final rule is effective November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, (202) 325–0274.

SUPPLEMENTARY INFORMATION:

Background

It is the policy of Customs and Border Protection (CBP) to periodically review title 19 of the Code of Federal Regulations (19 CFR) to ensure that it is accurate and up-to-date so that the importing and general public is aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain corrections to 19 CFR parts 4 and 10 are necessary.

Discussion of Changes

Part 4

Sections 4.2, 4.3, 4.9, and 4.60 of the CBP regulations (19 CFR 4.2, 4.3, 4.9, and 4.60) govern the arrival, entry, and clearance of vessels. Currently, these regulatory provisions require, in part, that U.S. vessels carrying bonded merchandise must report their arrival, make formal entry, and obtain formal clearance, when arriving or departing a port or place within the United States. These regulatory provisions are not in conformance with their respective controlling statutes. Sections 1452(a)(1), (2), and (3) of the Tariff Suspension and Trade Act of 2000 ("Trade Act") (Pub. L. 106–476, 114 Stat. 2167 (2000)) amended 19 U.S.C. 1433(a)(1)(C), 19 U.S.C. 1434(a)(3), and 46 U.S.C. 60105(a)(2) [1] to exempt arriving and departing vessels of the United States that are carrying bonded merchandise from these arrival, entry, and clearance requirements. Accordingly, this document makes conforming changes to §§ 4.2(a), 4.3(a)(3), 4.9(b), and 4.60(a)(3) to reflect these statutory amendments.

Part 10

Section 10.121 of the CBP regulations (19 CFR 10.121) governs CBP's role in administering the duty-free importation of qualifying visual and auditory materials under the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character" made at Beirut, Lebanon in 1948 (also referred to as the "Beirut Agreement of 1948") (Pub. L. 89–634, 80 Stat. 879 (October 8, 1966)). Executive Order 11311, 31 FR 13413 (Oct. 18, 1966), implemented the United States' obligations under the Agreement and designated the United States Information Agency (USIA) to carry out its provisions. The USIA was abolished in 1999 by the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105–277, 112 Stat. 2681–776 (1998)), and its functions transferred to the U.S. Department of State. This document amends 19 CFR 10.121 to reflect this fact.

This document also amends § 10.121(a) to reflect the changes made to subheading 9817.00.40 of the Harmonized Tariff Schedule of the United States (HTSUS), and to the U.S. Notes in Subchapter XVII, Chapter 98, HTSUS. Subheading 9817.00.40, HTSUS, permits duty-free treatment for certain articles that are determined to be visual or auditory materials of an educational, scientific, or cultural character within the meaning of Article I of the Agreement. The U.S. Notes to Subchapter XVII were changed by Presidential Proclamation. *See* Proclamation No. 5978, 54 FR 21187 (May 17, 1989). The note related to the Agreement for subheading 9817.00.40, HTSUS, was changed from "note 1" to "note 1(a)(i)". Section 10.121(a) currently references "U.S. Note 1," which is amended to reference "U.S. note 1(a)(i)."

In addition, this document amends § 10.121(b) to remove the word "shall" in the first, second and last sentences and to replace it with the word "will" in order to conform this regulation with the plain English mandate. Lastly, the word "immediately" is deleted from the last sentence because the use of this term conflicts with the phrase "in the ordinary course" as a consumption entry would liquidate on a set schedule and not immediately as the sentence currently reads.

Other Changes

This document also makes non-substantive amendments to 19 CFR to reflect the nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS's subsequent renaming of the agency as U.S. Customs and Border Protection on March 31, 2007 (*see* 72 FR 20131 (April 23, 2007)).

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document merely conform to existing law and regulation, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Bonds, Cargo vessels, Customs duties and inspection, Entry, Imports, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ For the reasons set forth above, parts 4 and 10 of the CBP regulations (19 CFR parts 4 and 10) are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general and specific authority citations for part 4 continue to read as follows:

Authority: 5. U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.2 also issued under 19 U.S.C. 1441, 1486;

[1] The Trade Act amended 46 U.S.C. App. 91. However, 46 U.S.C. App. 91 was recodified to 46 U.S.C. 60105 by statute (Pub. L. 109–304, 120 Stat. 1675 (Oct. 9, 2006)).

Section 4.3 also issued under 19 U.S.C. 288, 1441;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

§ 4.2 [Amended]

■ 2. In § 4.2:

■ a. Paragraph (a) is amended: by removing the word "Customs" each time that it appears and adding in its place the term "CBP"; in the first sentence, by removing the words "bonded merchandise or", and by removing the word "shall" and adding in its place the word "must", and; in the second sentence, by removing the word "shall" and adding in its place the word "may";

■ b. Paragraph (b) is amended by removing the word "Customs" and adding in its place the word "customs";

■ c. Paragraph (c) is amended, in the first sentence, by removing the word "may" and adding in its place the word "must", and by removing the word "shall" and adding in its place the word "must"; and; in the last sentence, by removing the word "shall" and adding in its place the word "will", and by removing the word "may" and adding in its place the word "must"; and

■ d. Paragraph (d) is amended by removing the word "shall" and adding in its place the word "must".

§ 4.3 [Amended]

■ 3. In § 4.3:

■ a. Paragraph (a)(3) is amended by removing the words "merchandise on board which is being transported in-bond (not including bonded ship's stores or supplies), or", and adding the words "on board" after the words "foreign merchandise"; and

■ b. Paragraph (b)(2) is amended by removing the word "Customs" each time that it appears and adding in its place the term "CBP".

§ 4.9 [Amended]

■ 4. In § 4.9:

■ a. Paragraph (a) is amended by removing the word "Customs" each time that it appears and adding in its place the term "CBP"; and

■ b. Paragraph (b) is amended in the second sentence by removing the words "when they have merchandise aboard which is being transported in-bond, or", by removing the third and fourth sentences, and by removing the word "Customs" in the last sentence and adding in its place the term "CBP".

§ 4.60 [Amended]

■ 5. In § 4.60:

■ a. Paragraph (a) is amended by removing the words "the Customs Service" and adding in their place the term "CBP";

■ b. Paragraph (a)(3) is amended by removing the words "merchandise on board that is being transported in-bond (not including bonded ship's stores or supplies), or";

■ c. Paragraph (b)(1) is amended by removing the word "Customs" and adding in its place the word "customs";

■ d. Paragraph (c) is amended by removing the word "shall" and adding in its place the word "will";

■ e. Paragraph (d) is amended, in the first sentence, by removing the words "shall be reported" and adding in their place the words "must be reported", and by removing the words "shall note" and adding in their place the words "will note", and; in the last sentence, by removing the word "shall" each time that it appears and adding in its place the word "must"; and

■ f. Paragraph (e) is amended by removing the word "shall" and adding in its place the word "will".

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

■ 7. § 10.121 is revised to read as follows:

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there must be filed, in connection with the entry covering such articles, a document issued by the U.S. Department of State certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. note 1(a)(i), Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the port director. Liquidation of an entry covering merchandise which has been released under this procedure will be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the director of the port of entry does not receive the required document within the 90-day period, the merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

Dated: November 9, 2010.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2010–28709 Filed 11–12–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

[Docket No. FDA–2010–N–0002]

New Animal Drugs; Change of Sponsor; Sulfadiazine and Pyrimethamine Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for sulfadiazine and pyrimethamine oral suspension from Animal Health Pharmaceuticals, LLC, to Pegasus Laboratories, Inc.

DATES: This rule is effective November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300, *e-mail: steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Animal Health Pharmaceuticals, LLC, 1805 Oak Ridge Circle, suite 101, St. Joseph, MO 64506, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–240 for REBALANCE (sulfadiazine and pyrimethamine) Antiprotozoal Oral Suspension to Pegasus Laboratories, Inc., 8809 Ely Rd., Pensacola, FL 32514. Accordingly, the regulations are amended in 21 CFR 520.2215 to reflect this change of sponsorship.

Following this change of sponsorship, Animal Health Pharmaceuticals, LLC, is no longer the sponsor of an approved application. Accordingly, § 510.600 (21

CFR 510.600) is being amended to remove the entries for this firm.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1) remove the entry for "Animal Health Pharmaceuticals, LLC"; and in the table in paragraph (c)(2) remove the entry for "068718".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.2215 [Amended]

■ 4. In paragraph (b) of § 520.2215, remove "068718" and add in its place "055246".

Dated: November 8, 2010.

Steven D. Vaughn,

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

[FR Doc. 2010–28549 Filed 11–12–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2010–N–0534]

New Animal Drugs for Minor Use and Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations regarding new animal drugs for minor use and minor species to update language and to clarify the regulations consistent with the explanations in the preambles to the proposed and final rules establishing them. This action is being taken to ensure accuracy and clarity in the Agency's regulations.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the Agency receives any significant adverse comments and withdraws this direct final rule. The companion proposed rule and direct final rule are substantively identical.

DATES: This rule is effective March 30, 2011. Submit either electronic or written comments by January 31, 2011. If FDA receives no significant adverse comments within the specified comment period, the Agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0534, 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 number 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 "Request for 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, 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: Meg Oeller, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9005.

SUPPLEMENTARY INFORMATION:

I. Background

The Minor Use and Minor Species Animal Health Act of 2004 amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish new regulatory procedures that provide incentives intended to make more drugs legally available to veterinarians and animal owners for the treatment of minor animal species and uncommon diseases in major animal species. FDA published the final rule to implement these regulations (part 516 (21 CFR part 516)) in the **Federal Register** of July 26, 2007 (72 FR 41010).

FDA is issuing this direct final rule to amend its regulations regarding new animal drugs for minor use and minor species (MUMS) in part 516 to update language and clarify the intent of the regulations consistent with the preambles to the proposed and final rules.

In § 516.3(b), FDA is amending the definition of "*Same dosage form*" to make it clearer that the six dosage form categories listed in the regulations under § 516.3(b)(i) through (b)(vi) are the "categories" of dosage forms that the preamble to the proposed rule referenced as follows: "The second test of sameness which the statute establishes to determine eligibility of an animal drug for designation is 'same dosage form.' The agency proposes to

use the long-established dosage form categories listed in Title 21 of the Code of Federal Regulations to implement this statutory requirement" (70 FR 56394 at 56398, September 27, 2005). To accomplish this clarification, the amendment will add the word "categories" after the phrase "dosage forms" and remove the "s" from "forms" in the first sentence of the definition.

Section 516.20(b)(2) requires that requests for MUMS designation include "* * * the generic and trade name, if any, of the drug * * *" intended to be designated and FDA is amending this language to replace the terms "generic" and "trade" with the terms "established" and "proprietary", respectively, because the latter are the terms used in the FD&C Act (see section 502(e) (21 U.S.C. 352(e)). FDA is also revising this language to clarify that "drug" in the context of § 516.20(b)(2) refers to the "active pharmaceutical ingredient (API)" name rather than to a formulated drug product name. The purpose of the information required in this provision of the regulation is to permit the Agency to determine whether a drug is eligible for designation on the basis that it is not the "same drug" as a drug that is already designated, conditionally approved, or approved (*see* section 573(a)(2)(B) of the FD&C Act (21 U.S.C. 360ccc–2)) and, because the definition of "same drug" in § 516.3(b) requires a knowledge of the drug's "active moiety" in order to make this determination, a request for MUMS designation needs to include the API name. This is because the API name includes the active moiety and the drug product name normally does not. FDA is also clarifying the relationship between established and proprietary names in this context with the use of parentheses.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. FDA is revising part 516 by updating language and clarifying its intent. This rule is intended to make noncontroversial changes to existing regulations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct rule.

FDA is providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If FDA receives any significant adverse comment, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment also states why this rule would be ineffective without the additional change.

If FDA does not receive significant adverse comment, the Agency will publish a document in the **Federal Register** confirming the effective date of the final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the **Federal Register**.

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at: *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

III. Legal Authority

FDA's authority to issue this direct final rule is provided by section 512(b)(1) of the FD&C Act (21 U.S.C. 360b(b)(1)). This section states that any person may file with the Secretary of Health and Human Services an application with respect to any intended use or uses of a new animal drug and sets forth the specific information that must be included in such an application. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act. FDA is issuing this direct final rule under these authorities.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and 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). The Agency believes that this final rule is not a 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. Because this direct final rule would not impose any compliance costs on the sponsors of animal drug products that are currently marketed or in development, the Agency certifies that the direct final rule will not 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. FDA does not expect this direct final rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the direct final rule

does not contain policies that 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 has concluded that the 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. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the direct final rule have been approved by OMB in accordance with the PRA under the regulations governing designation of new animal drugs for MUMS (part 516, OMB control number 0910–0605). Thus, § 516.20 as amended, does not constitute a new or additional paperwork burden requiring OMB approval.

VIII. Request for 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.

List of Subjects in 21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

■ Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 516 is amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 2. Amend § 516.3(b) by revising the introductory text of the definition of "*Same dosage form*" to read as follows:

§ 516.3 Definitions.

* * * * *

(b) * * *

Same dosage form means the same as one of the dosage form categories specified in the following parts of this chapter:

* * * * *

■ 3. Amend § 516.20 by revising paragraph (b)(2) to read as follows:

§ 516.20 Content and format of a request for MUMS-drug designation.

* * * * *

(b) * * *

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or permanent-resident U.S. agent including title, address, and telephone number; the established name (and proprietary name, if any) of the active pharmaceutical ingredient of the drug; and the name and address of the source of the active pharmaceutical ingredient of the drug.

* * * * *

Dated: November 3, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28550 Filed 11–12–10; 8:45 am]

BILLING CODE 4160–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in December 2010. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective December 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for December 2010.[1]

The December 2010 interest assumptions under the benefit payments regulation will be 2.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for November 2010, these interest assumptions represent an increase of 0.50 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during December 2010, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action"

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 206, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
206	12–1–10	1–1–11	2.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 206, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
206	12–1–10	1–1–11	2.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on November 8, 2010.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–28570 Filed 11–12–10; 8:45 am]

BILLING CODE 7709–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2010–0659; FRL–9225–6]

Approval and Promulgation of Air Quality Implementation Plans; New York, New Jersey, and Connecticut; Determination of Attainment of the 1997 Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area for the 1997 fine particle National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This rule will become effective on December 15, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2010–0659. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* 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 either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Programs Branch, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, (212) 637–3382, or by e-mail at *feingersh.henry@epa.gov* if you have questions related to New York or New Jersey. If you have questions related to Connecticut, please contact Alison C. Simcox, (617) 918–1684, or by e-mail at *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we", "us", or "our" is used, we mean EPA.

The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What action is EPA taking?
II. What comments were received and what is EPA's response?
III. What is the effect of this action?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is determining that the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area, referred to from this point forward as the NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area, for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period. Other specific requirements of the determination and the rationale for

EPA's proposed action are explained in the proposed rulemaking published on August 2, 2010 (75 FR 45076) and will not be restated here.

In addition, EPA is determining that the 1997 $PM_{2.5}$ NAAQS has been attained for the NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area by the initial attainment date of no later than April 5, 2010 as required under the provisions of EPA's $PM_{2.5}$ implementation rule (*see* 40 CFR 51.1004).

EPA notes that the State of New York provided information in support of the Clean Data Determination which EPA considered in this action. On June 9, 2010, EPA received a Clean Data petition from New York, requesting a determination that the New York State portion of the NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. In the petition, New York provided additional technical information supporting a Clean Data determination for the area, including a list of Federal and State emission control measures that have contributed to attainment of the 1997 $PM_{2.5}$ NAAQS, and a listing of annual $PM_{2.5}$ design values for the 2007–09 time period for air monitors located in the NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area. New York also provided an estimate of design values for sites that had less than complete air monitoring data due to site closure. The additional information provided by New York is further discussed in the Technical Support document (TSD), and is available in the docket.

II. What comments were received and what is EPA's response?

No public comments were received in response to the proposal.

III. What is the effect of this action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress plans (RFP), contingency measures, and other planning State implementation plans (SIPs) related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

This action does not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because the area does not have an approved maintenance plan as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

IV. Final Action

EPA is determining that the NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have Tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

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 because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures otherwise satisfying the provisions of the CAA.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the NY-NJ-CT $PM_{2.5}$ nonattainment area clean data determination, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: October 19, 2010.

H. Curtis Spalding,

Acting Regional Administrator, Region I.

Dated: September 29, 2010.

Judith A. Enck,

Acting Regional Administrator, Region II.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

■ 2. Section 52.379 is amended by redesignating the introductory paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.379 Control strategy: $PM_{2.5}$.

(a) * * *

(b) *Determination of Attainment.* EPA has determined, as of December 15, 2010, that the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Subpart FF—New Jersey

■ 3. Section 52.1602 is amended by adding new paragraph (c) to read as follows:

§ 52.1602 Control strategy and regulations: $PM_{2.5}$.

* * * * *

(c) Determination of Attainment. EPA has determined, as of December 15, 2010, that the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Subpart HH—New York

■ 4. Section 52.1678 is amended by adding new paragraph (e) to read as follows:

§ 52.1678 Control strategy and regulations: Particulate matter.

* * * * *

(e) Determination of Attainment. EPA has determined, as of December 15, 2010, that the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably control available measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. 2010–28504 Filed 11–12–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2238–F2]

RIN 0938–AP67

Medicaid Program; Withdrawal of Determination of Average Manufacturer Price, Multiple Source Drug Definition, and Upper Limits for Multiple Source Drugs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule withdraws two provisions from the "Medicaid Program; Prescription Drugs" final rule (referred to hereafter as "AMP final rule") published in the July 17, 2007 **Federal Register**. The provisions we are withdrawing are as follows: The determination of average manufacturer price, and the Federal upper limits for multiple source drugs. We are also withdrawing the definition of "multiple source drug" as it was revised in the "Medicaid Program; Multiple Source Drug Definition" final rule published in the October 7, 2008 **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 15, 2010.

FOR FURTHER INFORMATION CONTACT: Wendy Tuttle, (410) 786–8690.

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 2010, we published a proposed rule (75 FR 54073) in the **Federal Register** to withdraw two provisions from the "Medicaid Program; Prescription Drugs" final rule published in the July 17, 2007 **Federal Register** (72 FR 39142) (referred to hereafter as "AMP final rule"). The provisions we proposed to withdraw are as follows:

- Section 447.504 "Determination of AMP."
- Section 447.514 "Upper limits for multiple source drugs."

We also proposed to withdraw the definition of "multiple source drug" as it was revised in the "Medicaid Program; Multiple Source Drug Definition" final rule published in the October 7, 2008 **Federal Register** (73 FR 58491).

The AMP final rule, published in the July 17, 2007 **Federal Register** (72 FR 39142), implemented sections 6001(a) through (d), 6002, and 6003 of the Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted on February 8, 2006) (DRA) as well as codified parts of

section 1927 of the Social Security Act (the Act) that pertain to requirements for drug manufacturers' calculation and reporting of AMP and best price, and revised existing regulations that set FULs for certain covered outpatient drugs. The AMP final rule also implemented section 1903(i)(10) of the Act, as revised by the DRA with regard to the denial of FFP in expenditures for certain physician administered drugs. Finally, the AMP final rule addressed other provisions of the Medicaid Drug Rebate Program.

On November 7, 2007, a complaint was filed with the United States District Court for the District of Columbia by the National Association of Chain Drug Stores (NACDS) and the National Community Pharmacists Association (NCPA) (collectively, the Plaintiffs), which alleged that the AMP final rule unlawfully changed the methodology by which pharmacies are reimbursed for dispensing prescription drugs to Medicaid patients. On December 19, 2007, the Court issued a preliminary injunction which prohibits CMS from "[u]ndertaking any and all action to implement the AMP Rule to the extent such action affects Medicaid reimbursement rates for retail pharmacies under the Medicaid program," and, subject to certain exceptions, prohibits CMS from "[p]osting any AMP data on a public Web site or otherwise disclosing any AMP data to any individual or entities." The preliminary injunction, however, does not enjoin implementation of the AMP final rule as it relates to the calculation of rebates for the Medicaid rebate program, or the disclosure of AMP data to States as necessary for the administration of that program.

In response to this litigation, CMS published an interim final rule with comment period on March 14, 2008, followed by a final rule on October 7, 2008 to revise the definition of multiple source drug to better conform to the statutory definition of "multiple source drug" found in section 1927(k)(7) of the Act, and to inform the public of the procedures and practices the Agency would follow to ensure compliance with those statutory provisions. The Plaintiffs, however, amended their filing with the Court contending that the revised multiple source drug definition and implementation procedures remained inconsistent with the statute.

On July 15, 2008, the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) (MIPPA) was enacted. Section 203 of MIPPA prohibited HHS from imposing FULs prior to October 1, 2009 for multiple source drugs under § 447.514(b) as published in the July 17, 2007 AMP final rule. In accordance with MIPPA, CMS resumed publishing FULs for multiple source drugs using the methodology in § 447.332 as in effect on December 31, 2006. The methodology in § 447.332 applied through September 30, 2009.

As a result of the lawsuit, and subsequent preliminary injunction, CMS has been enjoined from implementing the AMP-based FULs that the DRA had required. However, manufacturers were not affected by the injunction and continue to calculate and report AMP for the purpose of Medicaid rebates, in accordance with the determination of AMP as specified in the AMP final rule.

Section 2503(a) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148, enacted on March 23, 2010), amends section 1927(e) of the Act by revising the Federal upper reimbursement limit to be no less than 175 percent of the weighted average (determined on the basis of utilization) of the most recently reported monthly AMPs for pharmaceutically and therapeutically equivalent multiple source drug products that are available for purchase by retail community pharmacies on a nationwide basis. It also amends section 1927(k) of the Act by revising the definitions of AMP and multiple source drug. In addition, it adds to section 1927(k) of the Act definitions of the terms "retail community pharmacy" and "wholesaler," and eliminates the term "retail pharmacy class of trade." The amendments made by section 2503(a) of the Affordable Care Act, as amended by section 1101(c) of the Health Care and Education Reconciliation Act (Pub. L. 111–152, enacted on March 30, 2010) and section 202 of the FAA Air Transportation Modernization and Safety Improvement Act (Pub. L. 111–226, enacted on August 10, 2010), were effective October 1, 2010.

II. Provisions of the Proposed Regulations

In the proposed rule published on September 3, 2010, we proposed the following revisions to the AMP final rule published on July 17, 2007:

- Section 447.504, "Determination of AMP," should be withdrawn in its entirety;
- Section 447.514, "Upper limits for multiple source drugs," should be withdrawn in its entirety; and
- The definition of "multiple source drug" in § 447.502, "Definitions" (as it was amended by the Multiple Source Drug rule published on October 7, 2008), should be withdrawn.

We proposed that the terms "average manufacturer price" and "multiple source drug" be defined in accordance with section 1927 of the Act, including changes made by section 2503 of the Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, and the FAA Air Transportation Modernization and Safety Improvement Act. In particular, drug manufacturers would be advised to base their AMP calculations on the definitions set forth in section 1927 of the Act, instead of on the AMP and AMP-related definitions provided in existing regulations and guidance.

Additionally, we proposed to revise three sections within the AMP final rule that make reference to the sections being proposed for withdrawal. Section 447.510 "Requirements for manufacturers," makes reference to § 447.504 "Determination of AMP," and § 447.512 "Drugs: Aggregate upper limits for payment," and § 447.518 "State plan requirements," make reference to § 447.514 "Upper limits for multiple source drugs. We proposed conforming regulatory amendments to those sections.

III. Analysis of and Responses to Public Comments

We received 16 comments in response to the September 3, 2010 proposed rule. We received comments from drug manufacturers, membership organizations, law firms, pharmacy benefit managers, a consulting firm, and a not-for-profit organization. A summary of the issues and our responses follow:

General Comments

Comment: Many commenters expressed general support for the provisions of the proposed rule. One commenter commended the agency's withdrawal proposal and commitment to develop regulations that will implement provisions of section 2503 of the Affordable Care Act. Another commenter stated that they believe it is appropriate that CMS withdraw these sections of the regulation as Congress recently amended several sections of section 1927 in the Affordable Care Act. One commenter applauded the Agency for moving forward with withdrawing the provisions of the AMP final rule as well as the Multiple Source Drug rule.

Response: We appreciate the comments in support of the withdrawal of the determination of AMP and the upper limits for multiple source drugs provisions as well as the withdrawal of the definition of multiple source drug. CMS is committed to developing further regulations that will provide the necessary guidance to all parties

impacted by the revisions made to the Medicaid Drug Rebate Program by the Affordable Care Act.

Definition of Bona fide Service Fees

Comment: We received several comments regarding the definition of bona fide service fees. A few commenters indicated the need for CMS to ensure that when it promulgates new regulations to implement the changes made by the Affordable Care Act, it seeks stakeholder input and provides further clarity on the treatment of bona fide service fees for the purposes of AMP reporting. Two commenters expressed concern that in the proposed rule, CMS did not propose to withdraw the definition of bona fide service fee. These commenters recommended that CMS also withdraw the definition of bona fide service fee to be consistent with the definition of bona fide service fee enacted by the Affordable Care Act. Other commenters recommended that despite the change the Affordable Care Act makes to the definition of bona fide service fee, the existing definition should remain intact and unchanged. One commenter noted that the language in the Affordable Care Act presupposes a background definition of bona fide service fees that would be applied to the named fees and any others paid by a manufacturer. Another commenter recommended that CMS provide clarification on how manufacturers should evaluate the language in the Affordable Care Act to be consistent with the historical definition.

Response: We appreciate the comments pertaining to bona fide service fees. At this time, we believe it would be inappropriate to withdraw the definition of bona fide service fee from the AMP final rule because the definition of bona fide service fee that is in § 447.502 "Definitions" was intended to apply to both AMP and best price calculations. While the Determination of AMP (§ 447.504) is being withdrawn, at this time, no change is being made to the Determination of Best Price (§ 447.505). Therefore, we see no need to withdraw the definition of bona fide service fees. We do note, however, that the definition of bona fide service fee at § 447.502 should not be used in the calculation of AMP. Issues related to the Affordable Care Act's treatment of bona fide service fees will be addressed in future rulemaking.

Definition of Multiple Source Drug

Comment: We received a few comments on the definition of "multiple source drug." One commenter indicated that an accurate definition of "multiple source drug" is critical to the implementation of the provisions of the Affordable Care Act. Two commenters stated that CMS should allow for public review and comment on a definition for what constitutes a "multiple source drug" that is available for purchase by retail community pharmacies on a nationwide basis.

Response: CMS continues to believe that the definition of "multiple source drug" in § 447.502 should be withdrawn in light of changes to the relevant statutory language in the Affordable Care Act. In the absence of Federal guidance or regulation, manufacturers should rely on section 1927(k)(7) of the Act, as amended by the Affordable Care Act, for the definition of "multiple source drug."

Withdrawal of Determination of AMP (§ 447.504)

Comment: We received one comment indicating support for the position that AMP continue to be calculated using the current regulation (42 CFR 447.504(g)(1)). This commenter indicated that if CMS were to change the definition of AMP and therefore require manufacturers to purchase data from wholesalers in order to calculate AMP, it would be a substantial burden and expense and could result in less accurate data.

Response: CMS interpreted this comment to mean the commenter disagreed with the withdrawal of § 447.504 in its entirety since the commenter specifically mentioned § 447.504(g)(1) in support of continuing to calculate AMP using the current regulation. We appreciate this comment, but in light of the changes in relevant statutory language, CMS continues to believe that withdrawing § 447.504 in its entirety is the appropriate action at this time.

Monthly AMP Calculations

Comment: One commenter suggested that CMS modify the quarterly AMP calculation requirement under § 447.504(i)(2) by eliminating the requirement that manufacturers report monthly AMP for single source drugs.

Response: In light of the changes in relevant statutory language made by the Affordable Care Act, we continue to believe it is necessary to withdraw all of § 447.504 at this time. In addition, we are not making further changes to the monthly AMP reporting requirements in this final rule.

Quarterly AMP Calculations

Comment: One commenter requested that CMS confirm the methodology for calculating quarterly AMPs stating that the proposed rule would delete the current provision (42 CFR § 447.504(i)(2)) that provides that the "[q]uarterly AMP is calculated as a weighted average of the monthly AMPs in the quarter." This commenter requested clarification on whether manufacturers should continue to calculate quarterly AMPs as a function of the monthly AMPs or whether a separate calculated quarterly AMP would be permitted or required.

Response: CMS recognizes that with the deletion of § 447.504 Determination of AMP, manufacturers will have questions regarding the calculation of AMP, including monthly and quarterly AMP calculations. Manufacturers should rely on the statutory language found at section 1927(k)(1) of the Act, as amended by the Affordable Care Act, and regulations (except those regulations or portions thereof have been withdrawn).

Customary Prompt Pay Discounts

Comment: We received a few comments regarding the definition of "customary prompt pay discounts." One commenter noted that the removal of § 447.504 would remove the definition of "customary prompt pay discounts" and would therefore create ambiguity as to whether a discount is customary. The commenter suggested that the definition of "customary prompt pay discounts" should remain in the regulation. Another commenter requested that CMS confirm that when it issues future regulations, it does not intend to change the definition of "customary prompt pay discounts," which the proposed rule would withdraw.

Response: Given the amendments made by the Affordable Care Act, we continue to believe that withdrawing § 447.504 in its entirety is the appropriate action at this time. We do expect to address this issue in future rulemaking. Until such time as those rules are issued and finalized, manufacturers should operate consistent with the Medicaid drug rebate statute, and regulations (except those regulations or portions thereof that have been withdrawn).

Reasonable Assumptions

Comment: We received one comment asking if the proposed regulation was designed to change the reasonable assumption option provided to manufacturers in the AMP final rule. The commenter went on to request that CMS confirm that manufacturers' reasonable assumptions may include assumptions based on the current AMP regulations to the extent that those

regulations do not appear inconsistent with the statutory changes.

Response: We wish to remind manufacturers that they may not rely on regulatory provisions and language that have been withdrawn. Until a subsequent rule is issued and finalized, manufacturers should rely on section 1927 of the Act, as amended by the Affordable Care Act, and regulations (except those regulations or portions thereof that have been withdrawn).

Base Date AMP Recalculation

Comment: A few commenters noted that CMS revised the language in the regulatory text of § 447.510(c), pertaining to a manufacturer's recalculation of the base date AMP. One commenter suggested that CMS should take this opportunity to amend § 447.510(c)(1) by removing the notation "[OFR: Insert publication date of the final rule]" and specify when these recalculations will be permitted in light of the evolving definition of AMP. Another commenter thought that the revision implied that manufacturers could submit revised base date AMPs on a product-by-product basis. A third commenter suggested that manufacturers be allowed a one-time restatement of AMP in order to have a more accurate comparison between base AMP and the current AMP.

Response: As indicated in the proposed rule, CMS proposed conforming regulatory amendments to §§ 447.510, 447.512, and 447.518 as these sections made specific references to the provisions being proposed for withdrawal. It would have been inappropriate to keep these references to §§ 447.504 and 447.514 since they would no longer exist in the regulatory text. By changing the references to section 1927 of the Act, CMS did not address whether manufacturers could restate base date AMPs. The reference to section 1927 of the Act merely replaces the references to the withdrawn regulatory text. As to the comment that CMS take this opportunity to replace the notation with the date when the recalculations would be permitted, while we appreciate the comment, taking such action would be outside the scope of the proposed rule.

Lagged Price Concessions

Comment: We received one comment expressing confusion over whether the proposed rule, if finalized, would delete the regulatory language on the AMP rolling average methodology for lagged price concessions that currently appears as 42 CFR 447.510(d)(2). Specifically, this commenter questioned whether the proposed rule would delete all of current 42 CFR 447.510(d)(2) and replace it with a single sentence, or whether it is just the first sentence being replaced and the rolling average provision would remain intact. The commenter recommended that CMS retain the current rolling average provision in the regulations as this approach has worked well to date and is consistent with the Affordable Care Act smoothing process. The commenter further stated that during the first year under the new AMP definition, manufacturers would like confirmation from CMS that they may choose whether to blend pre-ACA lagged price concessions with post-ACA lagged price concessions.

Response: We appreciate the commenter's concern about the methodology previously described in § 447.510(d)(2) regarding the calculation of monthly AMP. We have decided to revise the first sentence of this paragraph as stated in the proposed rule and delete the remaining sentences. We will address this issue in future rulemaking.

Regulatory Impact Statement

Comment: We received one comment regarding CMS' determination that this is not an economically significant rule. The commenter expressed concern that CMS indicated that the proposed rule will not have a significant impact on a substantial number of small entities. The commenter went on to share their view that withdrawing parts of the existing regulation will undoubtedly help maintain the economic viability of some community retail pharmacies, but remained concerned regarding CMS' implementation of the Affordable Care Act.

Response: This final rule withdraws regulatory provisions that have been superseded by the Affordable Care Act. In light of the new provisions established by the Affordable Care Act, we do not expect that this final rule will have any significant economic effects on small business entities. Therefore, CMS continues to believe this is not an economically significant rule.

Issues Not Addressed in the Proposed Rule

We received several comments on issues that were not addressed in the proposed rule. Many of the comments were in regards to the implementation of the Affordable Care Act. A summary of these comments is provided below. However, CMS does wish to clarify that while we appreciate the comments provided and recognize that the changes made by the Affordable Care Act are far reaching, the comments that follow are outside the scope of this proposed rule. CMS plans on issuing a proposed regulation addressing the Affordable Care Act provisions.

Effective Date of Affordable Care Act Changes to AMP and FULs

Comment: One commenter indicated that manufacturers will have to implement changes to AMP calculations beginning in October 2011 rather than October 2010.

Response: We wish to remind all interested parties, as noted in the "Background" section of this final rule, that the new statutory definition of AMP went into effect as of October 1, 2010. Manufacturers should rely on the statute, as revised by the Affordable Care Act, in calculating AMP.

Implementation of New AMP Definition

Comment: We received a number of comments regarding the changes the Affordable Care Act makes to the definition and determination of AMP. Several commenters expressed concern about the implementation of the new Affordable Care Act definition when CMS has yet to complete the rulemaking process. These commenters requested that CMS delay the implementation of the new requirements until such time as further guidance is provided. One commenter encouraged CMS to provide sub-regulatory guidance prior to the issuance of regulations, while another commenter indicated that CMS should not issue sub-regulatory guidance as it could result in ongoing revisions to AMP calculations. This commenter stated that manufacturers should be provided the ability to make the necessary reasonable assumptions for AMP calculations until official regulations are published. Some commenters provided specific recommendations as to how CMS should define AMP, while other commenters encouraged CMS to seek stakeholder input as to how to interpret the statute regarding which entities are to be included and excluded from the calculation of AMP, as well as the planned implementation schedule. One commenter specifically requested that CMS ensure that PBM rebates be excluded from AMP. Another commenter requested that a smoothing process be implemented for discounts to minimize the potential fluctuations in AMP from month to month. One commenter stated that AMP calculations should be consistent with both Average Sales Price (ASP) and Non-Federal Average Manufacturer Price (Non-FAMP) for the VA.

Response: While we appreciate these comments and suggestions, they raise

issues that we believe are outside the scope of the proposed rule and will not be addressed in this final rule. CMS does expect to issue proposed regulations addressing the Affordable Care Act provisions.

Federal Upper Limit (FULs)

Comment: We received comments regarding the implementation of the Federal Upper Limit (FUL) requirements. Several commenters encouraged CMS to delay the implementation of the new FULs requirement for multiple source drugs until a more precise definition of AMP is available. One commenter specifically recommended at least a 60-day transition between the issuance of a final regulation to implement the Affordable Care Act and the effective date of such regulation. A few commenters wanted to ensure that CMS would provide clear guidance that a FUL will be calculated when three or more therapeutically and pharmaceutically equivalent multiple source drug products are available for purchase by retail community pharmacies on a nationwide basis. Several commenters recommended that CMS develop a methodology to determine when it would be appropriate to exceed 175 percent of AMP when calculating a FUL. One commenter suggested that CMS develop a formal mechanism to appeal FULs in certain cases. A few commenters suggested that CMS establish a process to permit more frequent changes in a FUL or the suspension of a FUL, if it were warranted.

Response: This proposed rule does not address the implementation of the Affordable Care Act; and while we appreciate these comments, they raise issues that are outside the scope of the proposed rule and will not be addressed in this final rule. CMS does intend to issue a proposed regulation addressing the Affordable Care Act provisions.

Inhalation, Infusion, Instilled, Implanted and Injectable Drugs

Comment: CMS received a number of comments regarding the statutory amendment passed by Congress in August 2010 as part of Public Law 111–226 that addressed inhalation, infusion, instilled, implanted and injectable drugs that are not generally dispensed through retail community pharmacies. A few commenters stated that the Congressional intent of this amendment was to provide CMS with the authority to continue collecting rebates for these drugs that are not generally dispensed through a retail community pharmacy and was not intended to impact reimbursement to retail community pharmacies. Several commenters provided CMS with suggestions on how to define the phrase "not generally dispensed." Others commented that manufacturers need interpretive guidance in determining which of these drugs are not generally dispensed by a retail community pharmacy. One commenter suggested that CMS publish a list of drugs that meet the statutory definition of inhalation, infusion, instilled, implanted and injectable drugs. A few commenters indicated that CMS should exercise its discretionary authority to increase the FUL of these drugs, while others commented that a FUL should not be calculated for these drugs under any circumstances.

Response: While CMS appreciates these comments, the topic of inhalation, infusion, instilled, implanted and injectable drugs is beyond the scope of the proposed rule and will not be addressed in this final rule. CMS plans to issue a proposed regulation addressing these provisions of the Affordable Care Act.

340B Drug Prices

Comment: CMS received several comments regarding the impact of the AMP calculation on the discounted drug prices that 340B covered entities receive. One commenter urged that CMS coordinate with the Health Resources and Services Administration (HRSA) with respect to the application of the new AMP definition to 340B price calculations and to ensure that the new definition of AMP is used to calculate 340B ceiling prices as HRSA uses AMP data to calculate the 340B drug prices. CMS received a few comments in regard to the relationship between 340B drug prices and the amendment to the statute regarding inhalation, infusion, instilled, implanted and injectable drugs. One commenter stated that calculating AMP for these types of drugs based solely on retail community pharmacies' prices would have had a devastating impact on 340B discount prices of Factor Replacement Product (FRP) because only about 1 percent to 2 percent of FRP is distributed through retail community pharmacies. Another commenter stated that calculating AMP by taking into account discounts and rebates provided to non-retail pharmacies is important for 340B entities because the use of retail pricing alone would distort 340B price calculations.

Response: While we appreciate these comments, the topic of 340B drug pricing is outside the scope of the proposed rule and therefore will not be addressed in this final rule.

Adequate Documentation

Comment: CMS received several comments regarding the use of the phrase "adequate documentation" in § 447.504(g)(1), which states that sales to wholesalers are to be included in the calculation of AMP unless the manufacturer has adequate documentation showing the drugs are subsequently resold to an excluded entity as specified in paragraph (h). A few commenters recommended that CMS reverse this provision and instead provide guidance to manufacturers that sales and discounts should be excluded from AMP calculations unless the manufacturers have adequate documentation to show that the sales and discounts fit the statute's definition of AMP. Other commenters expressed support for retaining the current language. One commenter claimed that this language has worked well to date in promoting stability of AMP calculations and is not inconsistent with new statutory provisions. This commenter further stated that this language poses no risk of creating adverse consequences for pharmacies that serve Medicaid beneficiaries and would be unlikely to decrease FULs inappropriately. Another commenter stated that the Affordable Care Act seems to remain silent on this issue and recommends that the current language remain in effect in future regulations. One commenter supports the current language as a better approach than requiring manufacturers to generate or purchase data necessary to calculate an AMP that includes wholesaler sales, only if resale to a retail community pharmacy is documented.

Response: While we appreciate these comments, they are outside the scope of the proposed rule and therefore will not be addressed in this final rule, except to emphasize that § 447.504, including paragraph (g)(1), is being withdrawn by this final rule.

Authorized Generics

Comment: We received a few comments requesting CMS provide clarification regarding manufacturers with authorized generics. Two commenters requested that CMS confirm that transactions related to the transfer of authorized generics to secondary manufacturers that resell to community pharmacies are to be treated as wholesalers and therefore should be included in AMP. Another commenter stated that with the broader definition of wholesaler it is unclear whether authorized generics manufacturers would be considered in AMP.

Response: These comments are outside the scope of the proposed rule

and will not be addressed in this final rule. However, CMS does wish to clarify that while the definition of "wholesaler" as defined in § 447.504 of the AMP final rule will no longer exist, the Affordable Care Act does provide a new definition of wholesaler. Therefore, in the absence of regulatory guidance, manufacturers should refer to the statute, as revised by the Affordable Care Act. CMS does intend to issue a proposed regulation addressing the changes made by the Affordable Care Act.

Definitions of Retail Community Pharmacy and Wholesaler

Comment: We received comments regarding definitions that were revised or introduced in the Affordable Care Act. One commenter noted that an accurate definition of "retail community pharmacy" is critical to the implementation of the provisions within the Affordable Care Act. Another commenter recommended that CMS provide a table providing a specific breakdown of what is considered to be a retail community pharmacy. A few commenters indicated that CMS should revise the definition of "wholesaler" to be consistent with the new statutory definition of wholesaler. One commenter stated that an accurate definition of "wholesaler" is critical to the implementation of these new provisions.

Response: We appreciate these comments; however, they are outside the scope of the proposed rule and will not be addressed in this final rule. In the absence of regulatory guidance, interested parties should rely on the statute, as revised by the Affordable Care Act. CMS intends to issue a proposed regulation addressing the changes made by the Affordable Care Act.

Other Comments

Comment: We received comments requesting guidance on Line Extension Drugs, Medicaid Managed Care Organizations (MCOs), and State invoices to manufacturers. One commenter requested guidance on the implementation of the new requirements for calculating rebates for line extension drugs. This commenter noted that Release 81 provided guidance on how to perform the calculation and price comparison but it did not provide a useful interpretation of the term. Another commenter requested guidance regarding the implementation of the new statutory requirement, which requires that rebates to be collected on prescriptions paid by Medicaid MCOs. The commenter stated that companies will need data from CMS on the number of Medicaid beneficiaries enrolled in MCOs with pharmacy benefits to be able to verify prescription data. Additionally, this commenter had concerns regarding MCOs and 340B drugs and stated that the new statutory requirements for rebates on prescriptions paid by Medicaid MCOs creates the likelihood that double discounts could be imposed on manufacturers unless CMS makes it clear that such utilization may not be reported to Medicaid. One commenter raised concerns with a manufacturer's obligation to pay rebates on claims that are paid primarily by a non-Medicaid payor, where Medicaid is a secondary payor. This commenter was particularly interested in having CMS clarify that States may not invoice a manufacturer for more than 100 percent of the amount paid by the State associated with a drug claim.

Response: While we appreciate the comments, they are outside the scope of the proposed rule and will not be addressed in this final rule. However, CMS does wish to remind all interested parties that in the absence of regulatory guidance, they should refer to the statute as amended by the Affordable Care Act.

Retail Price Survey and Publication of AMP Data

Comment: We received one comment regarding the retail price survey which indicated that it would be important for CMS to only publish weighted average Retail Price Survey (RPS) data for multiple source drugs subject to the FUL and only include reimbursement paid to community retail pharmacies. Another commenter recommended that CMS review several months of the weighted AMP data before making it public.

Response: The issues raised in these comments are outside the scope of the proposed rule and will not be addressed in this final rule.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the September 3, 2010 proposed rule.

V. Collection of Information Requirements

This document does not impose any new reporting, recordkeeping, or disclosure requirements. The burden associated with the existing reporting requirements contained in § 447.510(a) is currently approved under OCN: 0938–0578.

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This regulatory action withdraws those regulatory provisions that have been superseded by the Affordable Care Act. In light of the new provisions established by the Affordable Care Act, we do not expect that this final rule will have any significant economic effects. Therefore, this final rule is not considered an economically significant rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this final rule will not have a significant impact on the

operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This rule will not have consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 447—PAYMENT FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart I—Payment for Drugs

■ 2. Section 447.502 is amended by removing the definition of "multiple source drug."

§ 447.504 [Removed and reserved]

■ 3. Section 447.504 is removed and reserved.

■ 4. Section 447.510 is amended by—

■ A. Republishing paragraph (a) introductory text.

■ B. Revising paragraphs (a)(1), (c)(2)(i), and (d)(2).

The revisions read as follows:

§ 447.510 Requirements for manufacturers.

(a) *Quarterly reports.* A manufacturer must report product and pricing information for covered outpatient drugs to CMS not later than 30 days after the end of the rebate period. The quarterly pricing report must include:

(1) AMP, calculated in accordance with section 1927(k)(1) of the Social Security Act.

* * * * *

(c) * * *

(2) * * *

(i) A manufacturer's recalculation of the base date AMP must only reflect the revisions to AMP as provided for in section 1927(k)(1) of the Social Security Act.

* * * * *

(d) * * *

(2) *Calculation of monthly AMP.* Monthly AMP should be calculated based on section 1927(k)(1) of the Social Security Act, except the period covered should be based on monthly, as opposed to quarterly AMP sales.

* * * * *

■ 5. Section 447.512 is amended by—

■ A. Removing and reserving paragraph (a).

■ B. Revising the introductory text of paragraph (b).

■ C. Revising paragraph (c).

The revisions read as follows:

§ 447.512 Drugs: Aggregate upper limits of payment.

(a) [Reserved]

(b) *Other drugs.* The agency payments for brand name drugs certified in accordance with paragraph (c) of this section and drugs other than multiple source drugs for which a specific limit has been established must not exceed, in the aggregate, payments levels that the agency has determined by applying the lower of the—.

* * * * *

(c) *Certification of brand name drugs.*

(1) The upper limit for payment for multiple source drugs for which a specific limit has been established does not apply if a physician certifies in his or her own handwriting (or by an electronic alternative means approved by the Secretary) that a specific brand is medically necessary for a particular recipient.

(2) The agency must decide what certification form and procedure are used.

(3) A check-off box on a form is not acceptable but a notation like "brand necessary" is allowable.

(4) The agency may allow providers to keep the certification forms if the forms will be available for inspection by the agency or HHS.

§ 447.514 [Removed and reserved]

■ 6. Section 447.514 is removed and reserved.

■ 7. Section 447.518 is amended by revising paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 447.518 State plan requirements, findings and assurances.

* * * * *

(b) * * *

(1) * * *

(i) In the aggregate, its Medicaid expenditures for multiple source drugs are in accordance with the established upper limits.

* * * * *

(2) *Assurances.* The agency must make assurances satisfactory to CMS that the requirements set forth in § 447.512 of this subpart concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: October 20, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 3, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–28649 Filed 11–9–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA038

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Bering Sea and Aleutian Islands Management Area (BSAI) by vessels participating in the Amendment 80 limited access fisheries. This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of Pacific cod in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 9, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2010 Pacific cod TAC allocated to the Amendment 80 limited access sector in the BSAI is 3,319 metric tons as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of Pacific cod in the BSAI allocated to the Amendment 80 limited access sector has been reached. Therefore, in accordance with § 679.21(b), NMFS is requiring that Pacific cod caught in the BSAI be treated as prohibited species by vessels participating in the Amendment 80 limited access fisheries.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Pacific cod by Amendment 80 limited access vessels in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010.

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

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28672 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA032

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Central Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific ocean perch total allowable catch specified for vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI is 1,796 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,786 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Central Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010.

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

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28677 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA031

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Eastern Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific ocean perch total allowable catch specified for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI is 1,751 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,741 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010.

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

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28679 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA033

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Western Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific ocean perch total allowable catch specified for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the

BSAI is 3,009 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2010 Pacific ocean perch TAC specified for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,999 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010.

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

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28681 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA034

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2010 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The allocation of Pacific ocean perch, in the Eastern Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 367 metric tons by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such 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 closure of the Pacific ocean perch fishery in the Eastern Aleutian District for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28684 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA035

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2010 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The allocation of Pacific ocean perch, in the Central Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 376 metric tons (mt) by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such 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 closure of the Pacific ocean perch fishery in the Central Aleutian District for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28687 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA036

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2010 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The allocation of Pacific ocean perch, in the Western Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 116 metric tons (mt) by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such 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 closure of the Pacific ocean perch fishery in the Western Aleutian District for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2010. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: November 9, 2010.

Brian Parker,

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

[FR Doc. 2010–28694 Filed 11–9–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 219
Monday, November 15, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0085]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before December 15, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0085, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) proposes to establish a new DHS system of records titled, "DHS/NPPD—001 National Infrastructure Coordinating Center (NICC) Records System of Records."

This system of records will allow DHS/NPPD, including the NICC (an extension of the National Operations Center (NOC)) to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the NICC.

The NICC provides the mission and capabilities to assess the operational status of the Nation's 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, supports information sharing with National Infrastructure Protection Plan (NIPP) partners, and owners and operators of critical infrastructure facilities, and facilitates information sharing across and between the 18 national sectors.

The NICC is both an operational component of the NPPD Office of Infrastructure Protection (IP) and a watch operations element of the DHS NOC. The NICC operates 24 hours a day, 7 days a week, 365 days a year to facilitate coordination and information sharing with the CIKR sectors. The NICC produces consolidated CIKR reports for incorporation into situational awareness reports and for inclusion into the common operating picture.

DHS is authorized to implement this program primarily through the Homeland Security Act of 2002 as codified within 6 U.S.C. 321d(b)(1), 515. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse CIKR information coming into and going out of the NICC as well as the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, State, tribal, local, international, foreign agency, or other appropriate entity including the private sector in their role aiding the NICC in their mission; to agencies, organizations or individuals for the purpose of an audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Based on the information contained within this system of records, the NICC develops reports that are shared both within DHS and with the CIKR sectors. The NICC creates two reports, one with PII and one without. The one without PII is what is shared broadly with the CIKR sectors as well as the State and local fusion centers. Consistent with DHS's information sharing mission, information contained in the DHS/NPPD—001 NICC Records System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies. This sharing will only take

place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to part 5, the following new paragraph "52":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

52. The DHS/NPPD—001NICC Records System of Records consists of electronic and paper records and will be used by DHS/NPPD/NICC. The DHS/NPPD—001NICC Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities. The DHS/NPPD—001NICC Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security is exempting this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: November 5, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–28569 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0053]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before December 15, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0053, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Michael Page (202–357–7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–

0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS), including the National Operations Center (NOC), proposes to establish a new DHS system of records titled, "DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records."

This system of records will allow DHS/OPS, including the NOC, to collect, plan, coordinate, report, analyze, and fuse information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the Department.

OPS serves as a joint operations coordination and planning capability at the strategic level to support internal DHS operational decision making, DHS leadership, and participation in interagency operations. OPS integrates DHS and interagency planning and operations coordination in order to prevent, protect, and respond to and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters.

The NOC serves as the nation's homeland security center for information sharing and domestic incident management, dramatically increasing coordination between federal, state, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals. The NOC collects and fuses information from a variety of sources everyday to help deter, detect, and prevent terrorist acts as well as to prepare for, respond to, and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters. Operating 24 hours a day, seven days a week, 365 days a year, the NOC provides real-time situational awareness and monitoring of the homeland, coordinates incident and response activities, and, in conjunction with other DHS components, issues advisories and bulletins concerning threats to homeland security, including natural disasters, as well as specific protective measures. Information on domestic incident management is shared with state Fusion Centers and Emergency Operations Centers (EOC) at all levels through Watch Officer Desks located in the NOC.

The purpose of this system is to:

1. *Collect, plan, coordinate, and analyze* all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals; and

2. *Report, integrate, and fuse* such information throughout DHS in order to share information, increase coordination, identify and assess the nature and scope of information and understand risks in light of potential or actual vulnerabilities to the homeland; and help deter, detect, and prevent terrorist acts as well as to prepare for, respond to, and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters.

DHS *is authorized to implement this program primarily through* 5 U.S.C. 301, 552, 552a; 44 U.S.C. 3101; 6 U.S.C. 121; §§ 201 and 514 of the Homeland Security Act of 2002, as amended; § 520 of the Post Katrina Emergency Management Reform Act; 44 U.S.C. 3101; Executive Order (E.O.) 12958; E.O. 9397; E.O. 12333; E.O. 13356; E.O. 13388; and Homeland Security Presidential Directive 5. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse homeland security information coming into and going out of OPS, including the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, State, tribal, local, international, foreign agency, or other appropriate entity including the privacy sector in their role aiding OPS in their mission; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Consistent with DHS's information sharing mission, information contained in the DHS/OPS—003 Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from

the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records. Some information in DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph "53":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

53. The DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records consists of electronic and paper records and will be used by DHS/OPS. The DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities. The DHS/OPS—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security is exempting this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: November 5, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–28572 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1112; Directorate Identifier 2010–NM–051–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The flight crew of a F28 Mark 0070 (Fokker 70) aeroplane received a MLG [main landing gear] unsafe message after landing gear down selection during approach. * * *

Inspection just after landing revealed a lot of ice near the LH (left-hand) MLG downlock actuator. * * *

Based on the quantity and location of the ice, it is considered highly likely that the ice had formed between the upper end of the downlock actuator and the upper side brace, and was accumulated during taxi on slush- and snow-contaminated taxiways and runway at the departure airport.

Ice in this location prevents the actuator from turning freely relative to the upper side brace during landing gear down selection, likely resulting in failure of the piston rod. This condition, if not corrected, could lead to further cases of MLG extension problems, possibly resulting in loss of control of the aeroplane during landing roll-out.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Fokker service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

For Goodrich service information indentified in this proposed AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–827–7777; e-mail *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1112; Directorate Identifier 2010–NM–051–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0268, dated December 17, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The flight crew of a F28 Mark 0070 (Fokker 70) aeroplane received a MLG [main landing gear] unsafe message after landing gear down selection during approach. After cycling the landing gear, only a LH [left-hand] MLG unsafe indication remained. A go-around was initiated and alternate landing gear down selection was performed twice, but the LH MLG did not lock down. During final approach, without further flight crew action, all 3 green lights illuminated and an uneventful landing was made.

Inspection just after landing revealed a lot of ice near the LH MLG downlock actuator. Further investigation revealed that the piston rod of the downlock actuator had failed at the threaded end close to the eye end, which is attached to the lower lock link, and that the piston rod was broken in an overload by bending in the neck close to the threaded end.

Based on the quantity and location of the ice, it is considered highly likely that the ice had formed between the upper end of the downlock actuator and the upper side brace, and was accumulated during taxi on slush- and snow-contaminated taxiways and runway at the departure airport.

Ice in this location prevents the actuator from turning freely relative to the upper side brace during landing gear down selection, likely resulting in failure of the piston rod. This condition, if not corrected, could lead to further cases of MLG extension problems, possibly resulting in loss of control of the aeroplane during landing roll-out.

To address this unsafe condition and prevent the accumulation of water, slush and/or snow, Goodrich, the MLG manufacturer, has introduced a new upper side brace, Part Number (P/N) 41350–3, which has two additional drain holes. Goodrich Service Bulletin (SB) 41350–32–25 describes the modification of the P/N 41350–1 MLG upper side brace, introducing the two additional drain holes and consequent re-identification of the part to P/N 41350–3.

For the reasons described above, this AD requires modification of both (LH and RH [right-hand]) P/N 41350–1 MLG upper side braces, or replacement of the P/N 41350–1 upper side braces with modified P/N 41350–3 upper side braces.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–157, Revision 1, dated October 7, 2009. Goodrich Corporation has issued Service Bulletin 41350–32–25, dated January 30, 2009. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **NOTE** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 16 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,160, or $1,360 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2010–1112; Directorate Identifier 2010–NM–051–AD.

Comments Due Date

(a) We must receive comments by December 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category; all serial numbers, if equipped with Goodrich (formerly Menasco, Colt Industries) main landing gears (MLGs) fitted with MLG upper side braces having part number (P/N) 41350–1.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The flight crew of a F28 Mark 0070 (Fokker 70) aeroplane received a MLG [main landing gear] unsafe message after landing gear down selection during approach. * * *

Inspection just after landing revealed a lot of ice near the LH MLG downlock actuator. * * *

Based on the quantity and location of the ice, it is considered highly likely that the ice had formed between the upper end of the downlock actuator and the upper side brace, and was accumulated during taxi on slush- and snow-contaminated taxiways and runway at the departure airport.

Ice in this location prevents the actuator from turning freely relative to the upper side brace during landing gear down selection, likely resulting in failure of the piston rod. This condition, if not corrected, could lead to further cases of MLG extension problems, possibly resulting in loss of control of the aeroplane during landing roll-out.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 8,000 flight cycles after the effective date of this AD, modify or replace the side stay upper braces of the left-hand and right-hand MLG, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 41350–32–25, dated January 30, 2009; and Fokker Service Bulletin SBF100–32–157, Revision 1, dated October 7, 2009.

(h) After modifying the side stay upper braces of the left-hand and right-hand MLG as required by paragraph (g) of this AD, do not install any Goodrich (formerly Menasco, Colt Industries) side stay upper brace assembly having P/N 41350–1 on any airplane.

(i) After modifying the side stay upper braces of the left-hand and right-hand MLG as required by paragraph (g) of this AD, do not install any Goodrich (formerly Menasco, Colt Industries) MLG on any airplane, unless the replacement MLG has side stay upper braces having P/N 41350–3.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(k) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0268, dated December 17, 2009; Fokker Service Bulletin SBF100–32–157, Revision 1, dated October 7, 2009; and Goodrich Service Bulletin 41350–32–25, dated January 30, 2009; for related information.

Issued in Renton, Washington, on November 3, 2010.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28606 Filed 11–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1113; Directorate Identifier 2010–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches Part Number (P/N) 601R59320–1 were not detecting the consequent bleed leak at the design threshold. As a result, Airworthiness Limitation (AWL) tasks, consisting of a functional check of the wing leading edge thermal switches (P/N 601R59320–1) and an inspection of the wing anti-ice duct piccolo tubes on aeroplanes with these switches installed, have been introduced. These tasks will limit exposure to dormant failure of the wing leading edge thermal switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

* * * * *

The unsafe condition is loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail; *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1113; Directorate Identifier 2010–NM–121–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–12, dated May 26, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches Part Number

(P/N) 601R59320–1 were not detecting the consequent bleed leak at the design threshold. As a result, Airworthiness Limitation (AWL) tasks, consisting of a functional check of the wing leading edge thermal switches (P/N 601R59320–1) and an inspection of the wing anti-ice duct piccolo tubes on aeroplanes with these switches installed, have been introduced. These tasks will limit exposure to dormant failure of the wing leading edge thermal switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

This directive mandates revision of the approved maintenance schedule to include the above referenced tasks, including phase-in schedules that supersede the phase-in schedules specified in the AWL tasks.

Note: Thermal switches, P/N 601R59320–1, were installed in production on aircraft Serial Numbers (S/N) 7213 and subsequent. Service Bulletin 601R–30–022 covered in-service installation of these switches on aircraft S/Ns 7003 through 7212.

The unsafe condition is loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Temporary Revisions (TR) 2A–49 and TR 2A–50, both dated November 17, 2009, to Appendix A, "Certification Maintenance Requirements," of Part 2, "Airworthiness Limitations," of the Bombardier CL–600–2B19 Maintenance Requirements Manual. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a **NOTE** within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 628 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $53,380, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2010–1113; Directorate Identifier 2010–NM–121–AD.

Comments Due Date

(a) We must receive comments by December 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; serial numbers 7003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During flight-testing of a wing anti-ice piccolo tube containing a deliberate small breach, it was determined that the wing leading edge thermal switches Part Number (P/N) 601R59320–1 were not detecting the consequent bleed leak at the design threshold. As a result, Airworthiness Limitation (AWL) tasks, consisting of a functional check of the wing leading edge thermal switches (P/N 601R59320–1) and an inspection of the wing anti-ice duct piccolo tubes on aeroplanes with these switches installed, have been introduced. These tasks will limit exposure to dormant failure of the wing leading edge thermal switches in the event of piccolo tube failure, which could potentially compromise the structural integrity of the wing leading edge and the effectiveness of the wing anti-ice system.

* * * * *

The unsafe condition is loss of control of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) by incorporating Task Number C36–20–133–03 specified in Bombardier Temporary Revision (TR) 2A–50, dated November 17, 2009; and Task Number C30–10–133–01 specified in Bombardier TR 2A–49, dated November 17, 2009; into Appendix A, "Certification Maintenance Requirements," of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). For these tasks, the initial compliance time starts at the applicable time specified in paragraphs (g)(1) and (g)(2) of this AD. Thereafter, except as provided by paragraph (h) of this AD, no alternative functional check of the thermal switch or detailed visual inspection of the piccolo tube may be approved.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Bombardier TR 2A–49 and TR 2A–50, both dated November 17, 2009, into the Appendix A of Part 2 of the Bombardier CL–600–2B19 MRM. When these TRs have been included in Appendix A of Part 2 of the general revisions of the MRM, the general revisions may be inserted in the MRM, provided that the relevant information in the general revision is identical to that in Bombardier TR 2A–49 and TR 2A–50, both dated November 17, 2009.

(1) For Task Number C36–20–133–03, the initial compliance time is before the accumulation of 15,000 total flight hours or within 7 months after the effective date of this AD, whichever occurs later.

(2) For Task Number C30–10–133–01, the initial compliance time is before the accumulation of 15,000 total flight hours on the piccolo tube or within 7 months after the effective date of this AD, whichever occurs later.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2010–12, dated May 26, 2010; and Bombardier TR 2A–49, dated November 17, 2009, and Bombardier TR 2A–50, dated November 17, 2009 to Appendix A, "Certification Maintenance Requirements," of Part 2 of the Bombardier CL–600–2B19 MRM; for related information.

Issued in Renton, Washington, on November 3, 2010.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28604 Filed 11–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0960; Directorate Identifier 98–ANE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 768, 772, and 772B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: We propose to rescind an airworthiness directive (AD) for the products listed above. The existing AD, AD 98–09–27, resulted from aircraft certification testing which revealed that stresses on the thrust reverser hinge were higher than had been anticipated during engine certification, and the United Kingdom Civil Aviation Authority, issuing AD 008–03–97.

Since we issued AD 98–09–27, we discovered that its requirements were duplicated in airplane-level AD 2001–09–14, issued by the FAA Transport Airplane Directorate. This proposal to rescind the engine-level AD allows the public the opportunity to comment on the FAA's determination of the duplication of requirements in another AD, before we rescind the engine-level AD.

DATES: We must receive comments on this proposed AD by December 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD rescission. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0960; Directorate Identifier 98–ANE–09–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD rescission. We will consider all comments received by the closing date and may amend this proposed AD rescission based on those comments.

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

Discussion

On April 23, 1998, the FAA Engine & Propeller Directorate issued engine AD 98–09–27 (63 FR 24911, May 6, 1998). On April 30, 2001, the FAA Transport Airplane Directorate issued airplane AD 2001–09–14 (66 FR 23838, May 10, 2001). Those ADs both require the same initial and repetitive visual inspections of Rolls-Royce plc RB211–Trent 768 and 772 series turbofan engine thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts.

Since we issued engine AD 98–09–27 and airplane AD 2001–09–14, we determined that duplicate ADs to address the same unsafe condition were unnecessary.

FAA's Determination and Requirements of This Proposed AD Rescission

We are proposing this AD rescission of AD 98–09–27 because we evaluated all information and determined that two FAA ADs with the same requirements are not necessary.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed rescission of a regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD rescission and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by rescinding airworthiness directive (AD) 98–09–27, Amendment 39–10508 (63 FR 24911, May 6, 1998):

Rolls-Royce plc: Docket No. FAA–2010–0960; Directorate Identifier 98–ANE–09–AD.

Comments Due Date

(a) We must receive comments by December 30, 2010.

Affected ADs

(b) This AD rescinds AD 98–09–27.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–Trent 768, 772, and 772B turbofan engines. These engines are installed on, but not limited to, Airbus A330–341 and A330–342 series airplanes.

Issued in Burlington, Massachusetts, on November 5, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–28583 Filed 11–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1111; Directorate Identifier 2010–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–200B, –300, –400, –400D, and –400F Series Airplanes Powered by Pratt and Whitney 4000 or General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 747–200B, –300, –400, –400D, and –400F series airplanes. This proposed AD would require an inspection to determine the part number of the door and to determine if the correct mid-pivot access door is installed, and the installation of a marker on the mid-pivot access door, and if necessary, repetitive ultrasonic inspections for cracking of the mid-pivot bolt assembly and eventual replacement of the mid-pivot bolt assembly. This proposed AD results from a report that the left and right spring beam mid-pivot bolt assembly access doors for the No. 1 strut were inadvertently installed in the incorrect position during strut modification. We are proposing this AD to detect and correct incorrectly installed mid-pivot bolt assemblies on the spring beam on the outboard struts. Incorrectly installed bolt assemblies could lead to fatigue cracking and consequent fracturing of the mid-pivot bolt assembly, which could lead to loss of the spring beam load path and the possible separation of a strut and engine from the airplane during flight.

DATES: We must receive comments on this proposed AD by December 30, 2010.

ADDRESSES: You may send comments by any of the following methods:

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

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail, *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1111; Directorate Identifier 2010–NM–129–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report that the mid-pivot access doors on the No. 1 strut were inadvertently installed in the incorrect position during strut modification. The design of the access doors can allow the doors to be installed on either side of the strut. The mid-pivot access door has machined tabs that fit the slots in the head of the mid-pivot bolt assembly. The machined tabs correctly orient the mid-pivot bolt assembly and prevent the mid-pivot bolt from rotating in the spring beam. The correct orientation of the mid-pivot bolt reduces the fatigue on the cross-drilled lubrication channel. If the lubrication channel is not in the correct orientation, fatigue cracking could develop in the mid-pivot bolt assembly. The fatigue cracking could lead to the fracture of the mid-pivot bolt assembly. Fracture of the mid-pivot bolt assembly could result in the loss of the spring beam load path. Loss of the spring beam load path could result in the separation of a strut and engine from the airplane during flight.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010. The service bulletin describes procedures for doing an inspection to determine the part number of the door and to determine if the correct mid-pivot access door is installed. For airplanes on which the correct door is installed, the service bulletin describes procedures for installing a marker on the mid-pivot access door. For airplanes on which the correct access door is not installed, Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010, describes procedures for rotating the mid-pivot bolt assembly to the correct orientation and replacing the access door, and installing the marker on the mid-pivot access door. In addition, for those airplanes without the correct door, the service bulletin describes procedures for doing one of two options:

• Doing repetitive ultrasonic inspections for cracks of the mid-pivot bolt assembly, and if no cracking is found, eventually replacing the assembly.

• Replacing the mid-pivot bolt assembly before further flight. Replacing the mid-pivot bolt assembly terminates the need for repetitive inspections.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 95 airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $24,225, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

The Boeing Company: Docket No. FAA–2010–1111; Directorate Identifier 2010–NM–129–AD.

Comments Due Date

(a) We must receive comments by December 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–200B, –300, –400, –400D, and –400F series airplanes, certificated in any category; equipped with Pratt and Whitney 4000 or General Electric CF6–80C2 series engines, as identified in Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/pylons.

Unsafe Condition

(e) This AD results from a report that the left and right spring beam mid-pivot bolt assembly access doors for the no. 1 strut were inadvertently installed in the incorrect position during strut modification. The Federal Aviation Administration is issuing this AD to detect and correct incorrectly installed mid-pivot bolt assemblies on the spring beam on the outboard struts. Incorrectly installed bolt assemblies could lead to fatigue cracking and consequent fracturing of the mid-pivot bolt assembly, which could lead to loss of the spring beam load path and the possible separation of a strut and engine from the airplane during flight.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection To Determine if Correct Door Is Installed

(g) Within 24 months after the effective date of this AD, do an inspection to determine if the correct mid-pivot access door is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(h) If, during the inspection required by paragraph (g) of this AD, the correct mid-pivot door is found to be installed, before further flight, install a marker on the mid-pivot access door, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(i) If, during the inspection required by paragraph (g) of this AD, the correct mid-pivot door is not found to be installed, before further flight, do the actions required by paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(1) Rotate the mid-pivot bolt assembly to the correct orientation and replace the mid-pivot access door with a new or serviceable mid-pivot access door.

(2) Install a marker on the mid-pivot access door.

(3) Do the actions required by paragraph (i)(3)(i) or (i)(3)(ii) of this AD.

(i) (Option 1) Do an ultrasonic inspection for cracking of the mid-pivot bolt assembly.

(A) If no cracking is found, do the actions required by paragraphs (i)(3)(i)(A)(*1*) and (i)(3)(i)(A)(*2*) of this AD.

(*1*) Repeat the ultrasonic inspection for cracking of the mid-pivot bolt assembly thereafter at intervals not to exceed 24 months until the action required by paragraph (i)(3)(i)(A)(*2*) of this AD is done.

(*2*) Within 60 months after the effective date of this AD, replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly. Replacement terminates the repetitive inspections required by paragraph (i)(3)(i)(A)(*1*) of this AD.

(B) If any cracking is found, replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly, before further flight.

(ii) (Option 2) Replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Kenneth Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on November 2, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28605 Filed 11–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2010–N–0534]

New Animal Drugs for Minor Use and Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding new animal drugs for minor use and minor species to update language and to clarify the regulations consistent with the explanations in the preambles to the proposed and final rules establishing them. This action is being taken to ensure accuracy and clarity in the Agency's regulations. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit electronic or written comments by January 31, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0534, 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 number 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 "Request for 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: Meg Oeller, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9005.

SUPPLEMENTARY INFORMATION:

I. Background

The Minor Use and Minor Species Animal Health Act of 2004 amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish new regulatory procedures that provide incentives intended to make more drugs legally available to veterinarians and animal owners for the treatment of minor animal species and uncommon diseases in major animal species. FDA published the final rule to implement these regulations (part 516 (21 CFR part 516)) in the **Federal Register** of July 26, 2007 (72 FR 41010).

FDA is proposing to amend its regulations regarding new animal drugs for minor use and minor species (MUMS) in part 516 to update language and clarify the intent of the regulations consistent with the preambles to the proposed and final rules.

In § 516.3(b), FDA is proposing to amend the definition of "*Same dosage form*" to make it clearer that the six dosage form categories listed in the regulations under § 516.3(b)(i) through (b)(vi) are the "categories" of dosage forms that the preamble to the proposed rule referenced as follows: "The second test of sameness which the statute establishes to determine eligibility of an animal drug for designation is 'same dosage form.' The agency proposes to use the long-established dosage form categories listed in Title 21 of the Code of Federal Regulations to implement this statutory requirement" (70 FR 56394 at 56398, September 27, 2005). To accomplish this clarification, the amendment will add the word "categories" after the phrase "dosage forms" and remove the "s" from "forms" in the first sentence of the definition.

Section 516.20(b)(2) requires that requests for MUMS designation include "* * * the generic and trade name, if any, of the drug * * *" intended to be designated and FDA is proposing to amend this language to replace the terms "generic" and "trade" with the terms "established" and "proprietary", respectively, because the latter are the terms used in the FD&C Act (*see* section 502(e) (21 U.S.C. 352(e)). FDA is also proposing to revise this language to clarify that "drug" in the context of § 516.20(b)(2) refers to the "active pharmaceutical ingredient (API)" name rather than to a formulated drug product name. The purpose of the information required in this provision of the regulation is to permit the Agency to determine whether a drug is eligible for designation on the basis that it is not the "same drug" as a drug that is already designated, conditionally approved, or approved (*see* section 573(a)(2)(B) of the FD&C Act (21 U.S.C. 360ccc-2)) and, because the definition of "same drug" in § 516.3(b) requires a knowledge of the drug's "active moiety" in order to make this determination, a request for MUMS designation needs to include the API name. This is because the API name includes the active moiety and the drug product name normally does not. FDA is also proposing to clarify the relationship between established and proprietary names in this context with the use of parentheses.

II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework to proceed with standard notice-and-comment rulemaking if the direct final rule receives significant adverse comment and is withdrawn. FDA is publishing the direct final rule because we believe the rule is non-controversial and we do not anticipate receiving any significant adverse comments.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a significant adverse comment. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received on this companion proposed rule will also be treated as comments on the direct final rule. We will not provide additional opportunity for comment.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this companion proposed rule. Instead, we will publish a document confirming the effective date within 30 days after the comment period ends, and we intend the direct final rule to become effective 30 days after publication of the confirmation notice.

If we receive any significant adverse comments, we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures. The Agency will address the comments in a subsequent final rule.

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at: *http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

III. Legal Authority

FDA's authority to issue this proposed rule is provided by section 512(b)(1) of the FD&C Act (21 U.S.C. 360b(b)(1)). This section states that any person may file with the Secretary of Health and Human Services an application with respect to any intended use or uses of a new animal drug and sets forth the specific information that must be included in such an application. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act. FDA is issuing this proposed rule under these authorities.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and 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). The Agency believes that this proposed rule is not a significant regulatory action as defined by 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. Because this proposed rule would not impose any compliance costs on the sponsors of animal drug products that are currently marketed or in development, the Agency proposes to certify that the final rule will not 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. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. 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. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in this proposed rule have been approved by OMB in accordance with the PRA under the regulations governing designation of new animal drugs for MUMS (part 516, OMB control number 0910–0605). Thus, § 516.20 as amended, does not constitute a new or additional paperwork burden requiring OMB approval.

VIII. Request for 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.

List of Subjects in 21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 516 is amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

1. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

2. Amend § 516.3(b), by revising the introductory text of the definition of "*Same dosage form*" to read as follows:

§ 516.3 Definitions.

* * * * *

(b) * * *

Same dosage form means the same as one of the dosage form categories specified in the following parts of this chapter:

* * * * *

3. Amend § 516.20 by revising paragraph (b)(2) to read as follows:

§ 516.20 Content and format of a request for MUMS-drug designation.

* * * * *

(b) * * *

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or permanent-resident U.S. agent including title, address, and telephone number; the established name (and proprietary name, if any) of the active pharmaceutical ingredient of the drug; and the name and address of the source of the active pharmaceutical ingredient of the drug.

* * * * *

Dated: November 3, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28551 Filed 11–12–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, 72, 75, and 90

RIN 1219–AB64

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings; corrections.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold six public hearings on the proposed rule addressing Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. The proposed rule was published on October 19, 2010 (75 FR 64412) and is available on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2010Prop/2010-25249.pdf*. This document also corrects a few errors in the preamble of the proposed rule.

The proposed rule would lower miners' exposure to respirable coal mine dust by revising the Agency's existing standards on miners' occupational exposure to respirable coal mine dust. The major provisions of the proposal would lower the existing exposure limits for respirable coal mine dust; implement full-shift sampling to address extended work shifts; redefine the term "normal production shift;" and provide for the use of a single full-shift sample to determine compliance under the mine operator and MSHA's inspector sampling programs. The proposed rule would also require the use of the Continuous Personal Dust Monitor (CPDM) for exposure monitoring, and expand requirements for medical surveillance.

The proposed rule would significantly improve health protections for underground and surface coal miners by reducing their occupational exposure to respirable coal mine dust and lowering the risk that they will suffer material impairment of health or functional capacity over their working lives.

DATES: Hearings will be held on the following dates: December 7, 2010, December 9, 2010, January 11, 2011, January 13, 2011, January 25, 2011 and January 27, 2011. The locations are listed in the **SUPPLEMENTARY INFORMATION** section of this document.

Post-hearing comments must be received by midnight Eastern Standard Time on February 28, 2011.

ADDRESSES: Comments must be identified with "RIN 1219–AB64" and may be sent by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB64" in the subject line of the message.
- *Facsimile:* 202–693–9441. Include "RIN 1219–AB64" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA will post all comments on the Internet without change, including any personal information provided. Comments can be accessed electronically at *http://www.msha.gov* under the "Rules & Regs" link. Comments may also be reviewed in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx*.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *Silvey.Patricia@dol.gov* (E-mail), (202) 693–9440 (Voice), or (202) 693–9441 (Fax).

SUPPLEMENTARY INFORMATION:

I. Public Hearings

MSHA will hold six public hearings on the proposed rule to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The public hearings will begin at 9 a.m. and end after the last presenter speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Contact No.
December 7, 2010	National Mine Health and Safety Academy, 1301 Airport Road, Beaver, WV 25813	304–256–3201
December 9, 2010	The George Washington Hotel, 60 South Main Street, Washington, PA 15301	724–225–3200
January 11, 2011	Marriott Evansville Airport, 7101 Highway 41, North Evansville, IN 47725	812–867–7999
January 13, 2011	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd., North Birmingham, AL 35203	205–324–5000
January 25, 2011	Marriott Salt Lake City, 75 S West Temple, Salt Lake City, UT 84101	801–531–0800
January 27, 2011	Mine Safety and Health Administration, 25th Floor Conference Room, 1100 Wilson Blvd., Arlington, VA 22209.	202–693–9440

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak; however, persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes.

Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. The transcript will be available to the public on MSHA's website at *http://www.msha.gov* under the "Rules & Regs" link.

MSHA will accept post-hearing written comments and other appropriate information for the record from any interested party, including those not presenting oral statements. Comments must be received by midnight Eastern Standard Time on February 28, 2011.

MSHA solicits comments from the mining community on all aspects of the proposed rule and is particularly interested in comments that address alternatives to key provisions in the proposal. For example, MSHA invites comment on other situations where it may be appropriate to require the use of CPDMs, such as sampling of other designated occupations on the mechanized mining unit to account for all mining techniques, potential

overexposures, and ineffective engineering controls. Commenters are requested to be specific in their comments and submit detailed rationale and supporting documentation for any comment or suggested alternative that is submitted.

II. Corrections

The following errors in the preamble to the proposed rule are corrected to read as follows:

1. On page 64413, second column, top of the page, first line, "from 1–105 fewer cases of pneumoconiosis per thousand exposed truck drivers, and" should read "that improvements would range from 7 fewer cases of pneumoconiosis per thousand loading machine operators up to 105 fewer cases of pneumoconiosis,".

2. On page 64421, second column, top of the page, eighth line, "(100 ug mg/m³)" should read "(100 ug/m³)".

3. On page 64476, *Table VII–6–Annualized Costs of Proposed Rule 7% Discount Rate,* in the fourth column, under the heading "501 +", first line, "$35.6" should read "$4.4," and in the fifth column, under the heading, "Totals," first line, insert "$35.6".

4. On page 64483, first column, second full paragraph, the equation:

"$ó_i = ì_i \times CV_{total}$."

should read:

"$\sigma_i = \mu_i \times CV_{total}$"

5. On page 64483, the equation in the center of the page:

$$\text{"}CV_{total}\ £\ CV_{CTV} = \sqrt{\left(\frac{0.14\ mg/m^3}{\mu_i\ mg/m^3}\times 100\%\right)^2 + (5\%)^2 + (5\%)^2}\text{"}$$

should read:

$$\text{"}CV_{total} \le CV_{CTV} = \sqrt{\left(\frac{0.14\ mg/m^3}{\mu_i\ mg/m^3}\cdot 100\%\right)^2 + (5\%)^2 + (5\%)^2}\text{"}$$

6. On page 64483, second column, below the equation being corrected in 5. above, the equation:

$$\text{"}ó = \mathbf{S}\cdot\sqrt{\left(\frac{0.14}{S}\right)^2 + (.05)^2 + (.05)^2}\text{"}$$

should read:

$$\text{"}\sigma = S\cdot\sqrt{\left(\frac{0.14}{S}\right)^2 + (.05)^2 + (.05)^2}\text{"}$$

Dated: November 9, 2010.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2010–28676 Filed 11–12–10; 8:45 am]

BILLING CODE 4510–43–P

Notices

Federal Register

Vol. 75, No. 219

Monday, November 15, 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

Forest Service

East Reservoir Project; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of vegetation management through commercial timber harvest, commercial thinning, precommercial thinning and prescribed fire, trail access management changes, and treatment of fuel adjacent to private property. The project is located in the Cripple Planning Subunit on the Libby Ranger District, Kootenai National Forest, Lincoln County, Montana, and south of Libby, Montana.

DATES: The scoping period will close and comments will be due 45 days following publication of this notice.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Malcolm R. Edwards, District Ranger, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923. They can be mailed, hand-delivered between the hours of 7:30 a.m. and 4 p.m., or faxed to (406) 283–7531. Electronic comments may also be sent to *comments-northern-kootenai-libby@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Denise Beck, Team Leader, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: The project area is approximately 30 air miles northeast of Libby, Montana, within all or portions of T30N, R28W, Sections 2 to 11, 13 to 30 and 32 to 36; T30N, R29W, Sections 1 to 4, 9 to 16 and 24; T31N, R327W, Sections 3 to 10, 15 to 18, 20 to 22, 28 and 29; T31N, R28W, Sections 1 thru 36; T31N, R29W, Sections 1, 2, 10 to 15, 22, 23, 26 to 36; T32N, R27W, Sections 7 to 9, 14 to 23 and 26 to 33; T32N, R28W, Sections 2 to 5 and 8 to 36; and T32N, R29W, Sections 24 to 26, 35 and 36 PMM, Lincoln County, Montana. The East Reservoir project area consists of five major drainages: Fivemile Creek, Warland Creek, Cripple Horse Creek, Canyon Creek and Dunn Creek.

Purpose and Need for Action

The purpose and need for this project is to: (1) Re-establish, restore and retain landscapes that are more resistant and resilient to disturbance (insect and disease infestations, fire) and uncertain environmental conditions (climate change) by enhancing species diversity and managing density; (2) reduce hazardous fuels adjacent to private property and across the landscape while re-introducing fire to the ecosystem; (3) restore, maintain or improve wildlife habitat; (4) improve recreation settings, opportunities and experiences; (5) provide amenities, jobs and products to the communities and maintain an adequate, balanced transportation system.

Proposed Action

To meet this purpose and need this project proposes:

(1) Vegetation treatments, including commercial timber harvest and associated fuel treatments, commercial thinning, precommercial thinning and prescribed burning without associated timber harvest. Vegetation treatments total approximately 13,000 acres of treated area.

(2) Road management includes new road construction, road storage and adding existing, undetermined roads to the National Forest Service road system. Approximately 2.04 miles of new road construction is proposed. Approximately 40 miles of road storage is proposed. There are 2.81 miles of roads in the project boundary that exist, but their status is undetermined. Those roads will be added to the NFS road system.

(3) Access change on approximately 35 miles of trail, from motorized to non-motorized, to benefit wildlife security.

(4) Fuels reduction and wildlife habitat enhancement is proposed for approximately 10,000 acres.

(5) Design features and mitigations to maintain and protect resource values.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Responsible Official

Forest Supervisor of the Kootenai National Forest, 31374 U.S. Highway 2 West, Libby, MT 59923. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Malcolm R. Edwards, District Ranger, Libby Ranger District.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: November 5, 2010.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2010–28614 Filed 11–12–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest Resource Advisory Committee

will meet in Grand Rapids, Minnesota. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to provide background information on national forest projects and processes to the Chippewa National Forest Resource Advisory Committee members and open a period for submittal of public proposals.

DATES: The meeting will be held on Tuesday, November 30, 2010, at 9:45 a.m.

ADDRESSES: The meeting will be held at the Minnesota Interagency Fire Center, Training Room, 402 11th Street, SE., Grand Rapids, Minnestoa 55744. Written comments should be sent to Chippewa National Forest RAC, 200 Ash Avenue, NW., Cass Lake, MN 56633. Comments may also be sent via e-mail to *kgetting@fs.fed.us,* or via facsimile to 218–335–8637.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Chippewa National Forest Supervisors Office. Visitors are encouraged to call ahead to 218–335–8600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kay K. Getting, Public Affairs Team Leader, Chippewa National Forest Supervisors Office, 218–335–8600. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of previous meeting content, Overview of typical projects of the Chippewa National Forest and Federal process timelines, Decision on when and how to submit project proposals, and a Public Forum. The agenda and any applicable documents may be previewed at the Secure Rural Schools RAC Web site *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by November 19th will have the opportunity to address the Committee at those sessions.

Dated: November 2, 2010.

Robert N. Schmal,

Acting Chippewa National Forest Supervisor.

[FR Doc. 2010–28601 Filed 11–12–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Humboldt Resource Advisory Committee (RAC) will meet in Eureka, California. The committee meeting is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act.

DATES: The meeting will be held December 7, 2010, from 5 p.m. to 7 p.m.

ADDRESSES: The meeting will be held at the Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Adam Dellinger, Committee Coordinator, at (707) 441–3569; e-mail *adellinger@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The agenda includes: Reviewing the status of Title II project submissions, voting process for recommendation of project funding, and public comment period.

Dated: November 3, 2010.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2010–28598 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday, December 1, 2010 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: December 1, 2010.

ADDRESSES: Forest Supervisor's Office, 31374 U.S. Hwy. 2, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *jturk@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda will include voting to fund projects for 2010. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: November 8, 2010.

Paul Bradford,

Forest Supervisor.

[FR Doc. 2010–28611 Filed 11–12–10; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Government in the 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 protection of BBG journalists, a resolution regarding the Agency's Ethics Program, a report from the Board's Governance Committee, a status 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. 2010–28782 Filed 11–10–10; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Special Comprehensive License.

OMB Control Number: 0694–0089.

Form Number(s): BIS–748P and BIS–752.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 542.

Number of Respondents: 64.

Average Hours per Response: 30 minutes to 40 hours.

Needs and Uses: The Special Comprehensive License procedure authorizes multiple shipments of items from the U.S. or from approved consignees abroad, who are approved in advance by BIS, to conduct the following activities: Servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: November 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–28616 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Foreign Availability Procedures.

OMB Control Number: 0694–0004.

Form Number(s): N/A.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 510.

Number of Respondents: 2.

Average Hours per Response: 255.

Needs and Uses: BIS's Office of Technology Evaluation (OTE) responds to requests by Congress and industry to make foreign availability determinations. OTE identifies foreign goods and technology analogous to American equipment subject to export controls. The U.S. and foreign equipment, however, must demonstrate a similarity of design or approach to the technical problems as well as exhibit similar performance and reliability characteristics. If the information merits an assessment, then it is used in that specific study of foreign availability. Continued restrictions on U.S. exports when comparable items are available from uncontrollable sources decreases U.S. competitiveness in high technology industries and undermines U.S. national security interests.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or Fax to (202) 395–5167.

Dated: November 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–28619 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–2010]

Foreign-Trade Zone 50—Long Beach, CA; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Long Beach, grantee of FTZ 50, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 2010.

FTZ 50 was approved by the Board on September 14, 1979 (Board Order 147, 44 FR 55919, 09/28/1979) and expanded on April 2, 1985 (Board Order 298, 50 FR 15205, 04/17/1985), on March 25, 1987 (Board Order 341, 52 FR 10393, 04/01/1987), on December 19, 1990 (Board Order 494, 55 FR 53581, 12/31/1990), on July 16, 1996 (Board Order 833, 61 FR 42832, 08/19/1996), on January 16, 2001 (Board Order 1141, 66 FR 8378, 01/31/2001) and on March 11, 2004 (Board Order 1319, 69 FR 13283, 03/22/2004).

The current zone project includes the following sites: Site 1 (8 acres)—909 East Colon Street, Wilmington; Site 2 (1,844 acres)—California Commerce Center, Ontario; Site 3 (68 acres)—within the Inter-City Commuter Station Redevelopment area at 1000 E. Santa Ana Boulevard, Santa Ana; Site 4 (175 acres, 6 parcels)—within the San Bernardino International Airport and Trade Center Complex in San Bernardino, located at 225 N. Leland Norton Way (1 acre), 255 S. Leland

Norton Way (2 acres), Perimeter Road (33 acres), Mill Street (19 acres), Central Avenue (32 acres), and 300 South Tippecanoe Avenue at East Mill Street (88 acres); Site 5 (5 acres)—10501–10509 E. Valley Blvd. at Pacific Place, El Monte; Site 6 (50 acres)—1875 West Mission Boulevard, Pomona; Site 7 (1 acre)—301 San Marino Avenue, between Broadway and Clary Avenues, San Gabriel; Site 8 (4 acres)—22941 South Wilmington Avenue, Carson; Site 9 (30 acres)—2560 East Philadelphia Street, Ontario; Site 10 (48 acres)—within Ontario Ridge Commerce Center at 3655 East Philadelphia Street, 2055 South Haven Street and 3625 East Philadelphia Street, Ontario; Site 11 (33 acres)—4100 E. Mission Boulevard, Ontario; Site 12 (32 acres)—1661 and 1777 S. Vintage Ave. and 1670 Champagne Ave., Ontario; Site 13 (7 acres)—2530 S. Birch Street, Santa Ana; Site 14 (7 acres)—3000 and 31000 Segerstrom Avenue, Santa Ana; Site 15 (9 acres)—2900 and 2930 South Fairviw Street, Santa Ana; Site 16 (1 acre)—3630 West Garry Avenue, Santa Ana; Site 17 (6 acres)—1101 W. McKinley Avenue (buildings 4, 5, 7, 8, & 22), Pomona; and, Site 18 (2 acres)—Santa Ana and Junipero Serra Streets, San Gabriel.

The grantee's proposed service area under the ASF would include all of Orange County and portions of Los Angeles County and San Bernardino County, California, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Los Angeles/Long Beach Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include fourteen of the existing sites as "magnet" sites (sites 1–8, 10, 14–18) and four of the existing sites as "usage-driven" sites (sites 9, 11–13). The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. The applicant is also requesting to expand the zone to include the following initial "usage-driven" sites: *Proposed Site 19* (22.09 acres)—VF Outdoor, Inc., 15614–15620 and 15700 Shoemaker Avenue, Santa Fe Springs (Los Angeles County); *Proposed Site 20* (22.32 acres)—Liberty Hardware, 5555 Jurupa Street, Ontario (San Bernardino County); *Proposed Site 21* (45.91 acres)—Tireco, Inc., 10545 Production Avenue, Fontana (San Bernardino County); *Proposed Site 22* (17.8 acres)—Schlosser Forge Company, 11711 Arrow Route, Rancho Cucamonga (San Bernardino County); and *Proposed Site 23* (15.7 acres)—Forged Metals Inc., 10685 Beech Avenue, Fontana (San Bernardino County). Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 50's authorized subzones.

In accordance with the Board's regulations, Christopher Kemp 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 14, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 29, 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 Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: November 8, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–28675 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA024

Request for Comments on the Draft Revision of the Estuary Habitat Restoration Strategy Prepared by the Estuary Habitat Restoration Council

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

ACTION: Notice; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration, on behalf of the interagency Estuary Habitat Restoration Council, is soliciting comments on the draft revision of the "Estuary Habitat Restoration Strategy."

DATES: Comments and information must be received by January 14, 2011.

ADDRESSES: Send comments to Estuary Habitat Restoration Strategy, NOAA Fisheries Service, 1315 East-West Highway, Room 14730, Silver Spring, MD 20910. Electronic comments may be submitted by e-mail to *estuaryrestorationact@noaa.gov* or via an online form at *http://www.era.noaa.gov*. NOAA is not responsible for e-mail comments sent to addresses other than the one provided here. Comments should be in one of the following formats: Word or Word Perfect. The subject line for submission of comments should begin with "Estuary Habitat Restoration Strategy comments from [insert name of agency, organization, or individual]." Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and may be posted to *http://www.era.noaa.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. A copy of the current strategy and authorizing legislation may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.era.noaa.gov* or *http://www.usace.army.mil/CECW/ERA/Pages/home.aspx.*

FOR FURTHER INFORMATION CONTACT: Jenni Wallace, NOAA Fisheries Service, Silver Spring, MD, 301–713–0174.

SUPPLEMENTARY INFORMATION: The Estuary Restoration Act of 2000, title I of Public Law 106–457 as amended by Section 5017 of the Water Resources Development Act of 2007, Public Law 110–114 (hereinafter referred to as "the Act"), has four purposes: (1) Promotion of estuary habitat restoration through a coordinated Federal approach relying on common standards for monitoring and a common system for tracking restored acreage; (2) Development of a national strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies as well as through public-private partnerships; (3) Provision of Federal assistance through cooperative agreements for efficient financing of estuary habitat restoration projects; and (4) Development and enhancement of monitoring and research capabilities to

ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.

The Estuary Habitat Restoration Council, consisting of representatives from the Department of the Army, National Oceanic and Atmospheric Administration, Environmental Protection Agency, United States Fish and Wildlife Service, and Department of Agriculture, was established to oversee implementation of the Act.

The Council was charged, among other things, with developing an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits and foster coordination of Federal and non-Federal activities. Mandatory elements of the strategy are set forth in section 106(d) of the Act. The Council is also responsible for soliciting, reviewing and evaluating project proposals, and submitting a list of recommended proposals to the Secretary of the Army with recommendations on project priority for funding and implementation. All projects selected for implementation must be consistent with the Strategy.

In December 2002 the Estuary Habitat Restoration Council published the Final Estuary Habitat Restoration Strategy (67 FR 71942). Section 106(f) of the Act authorizes the Council to periodically review and update the estuary habitat restoration strategy. The Council has drafted a revised Strategy. The intent of this notice is to obtain comments on the draft revised strategy prepared by the Estuary Habitat Restoration Council in accordance with the requirements of Section 106(e)–(f) of the Act. After reviewing public comments on the draft, the Council intends to publish the adopted revised version of the Estuary Habitat Restoration Strategy in early 2011.

The 2002 Strategy was broader than site-specific restoration, and encouraged the Council to develop a comprehensive approach to maximize coordination of ongoing Federal and non-Federal estuary habitat restoration activities throughout the country. There are many elements from the 2002 Strategy that continue to be relevant to the Council's efforts to effectively restore estuary restoration habitat. However, the 2002 Strategy contained some goals that, while worthwhile, were not achievable due to staffing and funding constraints. The draft revised strategy, therefore, focuses the Council's limited funding and resources on more attainable and realistic goals and identifies gaps that are not currently being filled by other Federal programs. In addition, the revised strategy identifies completed actions from the 2002 Strategy and discusses how the Council will build on these accomplishments in the future.

In order to develop the draft revised Strategy, information was gathered from the five Federal agencies involved with the Act. In accordance with Section 105(i) of the Act, the Council consulted with external stakeholders to obtain their advice. A stakeholder workshop was held in June 2010 and a request for public comments to guide the strategy revision process was published in the **Federal Register** on June 21, 2010 (75 FR 34975). The public comment period was open for 30 days. Stakeholders were asked to provide their opinions about the direction of the Act and how the program can best work with Federal and non-Federal partners to achieve shared goals.

During this stakeholder process, a variety of gaps were identified that the Council could direct resources to fill. However, two issues—climate change adaptation and socio-economic monitoring—were repeatedly raised. The Council addresses both of these issues in the draft revised Strategy.

Draft Revised Estuary Habitat Restoration Strategy

Introduction

The Estuary Restoration Act (title I of Pub. L. 106–457) (Act) was created in 2000 to establish a collaborative process among Federal agencies for addressing the pressures facing our Nation's estuaries. In 2007, the Act was amended by Section 5017 of the Water Resources Development Act (Pub. L. 110–114). As part of the Act, an inter-agency Estuary Habitat Restoration Council (Council) was established to encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes. The Council is also responsible for developing and revising from time-to-time an Estuary Habitat Restoration Strategy (Strategy) in accordance with Section 106 of the Act. This Strategy revises and supersedes the Final Estuary Habitat Restoration Strategy originally published in 2002 (67 FR 71942). The Council consists of representatives from the Department of the Army—U.S. Army Corps of Engineers (USACE), Department of Commerce—National Oceanic and Atmospheric Administration (NOAA), the Environmental Protection Agency, the Department of the Interior—United States Fish and Wildlife Service (USFWS), and the Department of Agriculture—Natural Resources Conservation Service (NRCS).

Consistent with 2002 Strategy, much of the Council's work has involved soliciting and funding on-the-ground habitat restoration projects. The Council has also been actively engaged in developing mechanisms that track estuary habitat restoration activities throughout the country and improve monitoring and research capabilities to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.

This revised Strategy enhances the Council's role in estuary habitat restoration, and establishes a focus that will maximize benefits to our Nation's estuaries. Based upon stakeholder feedback, and in alignment with the Administration's National Ocean Policy, the Council will direct resources toward restoration projects (and their monitoring) that will be able to adapt to the stressors associated with climate change. The Council will use climate adaptation as a priority-setting tool, while still addressing the other objectives and principles of the Strategy and Act.

Vision Statement

The primary objectives of this strategy are to: (1) Restore estuarine habitats in a manner that allows for adaptation to stressors associated with climate change, (2) build conservation partnerships, (3) provide incentives to partners to develop innovative restoration technology and (4) enhance monitoring capabilities.

Overarching Principles of the Estuary Restoration Act Strategy

The Council recognizes three overarching principles to efficiently implement the Act and to contribute to estuary habitat restoration efforts on a national scale. These principles include: supporting existing Federal programs and fostering partnerships between Federal and non-Federal partners; working at an ecosystem level; and working within existing regional governance structures and voluntary conservation frameworks actively engaged in estuary habitat restoration issues and supporting the Administration's National Ocean Policy.

To support this Strategy's identified focus these three principles will be viewed through the lens of climate change adaptation.

Public/Private Partnerships

To efficiently restore and preserve our Nation's estuarine habitat it is essential to enhance partnerships among government agencies, non-governmental entities, and private individuals.

Integrating with public-private partnerships is a central theme of the Act and a critical part of this Strategy. Currently, hundreds of existing public/private partnerships direct significant portions of their resources to the restoration of estuarine habitat throughout the United States. In addition, many of these ecosystem level partnerships currently incorporate climate change adaptation components into their own ongoing activities. Although too numerous to list, a few examples include the National Fish Habitat Action Plan, National Waterfowl Management Plan Joint Ventures, the National Estuary Program, the National Estuarine Research Reserve System, and Fish and Wildlife Service Landscape Conservation Cooperatives, as well as many projects implemented by both the NRCS and USACE and their partners.

To maximize public-private partnerships, the Council will prioritize funding to projects that collaborate among public agencies and private organizations during the implementation of estuary restoration projects.

Ecosystem Level Approach

This Strategy recognizes that successful estuary restoration projects with multiple goals will improve ecosystem function. In its review of project proposals, the Council will support projects developed in an ecosystem context with multiple benefits and those that utilize natural processes to restore and maintain estuary habitat. Restoration projects should be designed using an ecosystem or watershed approach to establish a self-sustaining area that provides the structure and function necessary to support the many interrelated physical, biological, and chemical components of healthy estuarine habitats.

Regional Ocean Governance and National Ocean Policy

The Act encourages coordination among all levels of government in order to address issues of estuarine habitat loss and degradation. The Council recognizes that there are a variety of regional governance structures whose efforts contribute significantly to estuary restoration, including the Gulf of Mexico Alliance, Northeast Regional Ocean Council, West Coast Governor's Agreement on Ocean Health, Mid-Atlantic Regional Council on the Ocean, and the South Atlantic Alliance. There are many existing Federal programs actively involved in the protection, restoration and science of estuaries that work with the regional governance structures. It is the goal of the Council to foster cooperation between government agencies at the Federal, State, and local levels, and that project proponents seeking funding from the Act collaborate on the ground with any existing local governance structures. In addition, the Council will reach out to non-ERA Federal agencies to encourage collaboration and support of the goals of the Act.

This coordination is in accordance with the Act and complements the Administration's National Ocean Policy, which includes a set of overarching guiding principles for management decisions and actions. The Council recognizes that the principles and objectives of this Strategy will aid the National Ocean Council in implementation of the Policy and Implementation Strategy. In particular, this Strategy supports Priority Objective 5: Resiliency and Adaptation to Climate Change and Ocean Acidification and Priority Objective 6: Regional Ecosystem Protection and Restoration.

Objectives of the Estuary Restoration Act Strategy

The following paragraphs describe the objectives of this Strategy.

Restore Estuarine Habitats in a Manner That Allows for Adaptation to Stressors Associated With Climate Change

Coastal and marine habitats are already experiencing effects of climate change and will continue to be among the first and most obvious areas to suffer damage as changes continue to occur. The Council recognizes that by increasing and protecting the amount of available habitat, restoration projects will account for many environmental stressors on estuarine species and increase the habitats' ability to adapt to changing climate conditions. Examples could include projects that increase the amount of available salt marsh habitat to buffer against sea level rise or a fish passage barrier removal project that increases available cool water habitat that will benefit anadromous fish.

Build Conservation Partnerships

In order to maximize public-private partnerships, the Council encourages collaboration among public agencies, private organizations, companies, and individuals (*e.g.,* private landowners, hunters, birders, and fishermen) in restoration efforts. This connectivity encourages private organizations, companies, landowners and others to bring their resources (financial or in-kind) to the table to assist in planning and implementing successful restoration projects.

The Council particularly encourages the use of existing partnerships and planning entities to carry out this Strategy, including the regional ocean governance structures.

Support Innovative Restoration Technology

The Act provides a financial incentive for the use of innovative technology or approaches by increasing the Federal share of the cost for the incremental increase in project cost due to the use of innovative technology. The Council encourages project planners to develop innovative technology as they design restoration projects. Additionally, project planners are encouraged to develop unique and innovative technologies that are designed with climate change adaption in mind. The Council recognizes that there is less risk involved when funding restoration projects that utilize familiar techniques, since there is a higher degree of certainty that the project will result in the desired outcomes. However, the Act emphasizes the need to support projects that utilize innovative technology and, therefore, the Council will prioritize projects that propose untested techniques that appear to be based on scientifically-sound assumptions. The Council will consider technology "innovative" if it involves a new process, technique, or material or uses existing processes, techniques, or materials in a new application or habitat type.

Enhance Monitoring Capabilities

Monitoring is important for a number of reasons. It allows practitioners to track success and determine which methodologies are successful, which are most cost effective, when adaptive management is required and when more information is required prior to implementing restoration. By closely tracking progress at the project level, restoration practitioners and policymakers can determine whether individual projects contribute to meeting the goals of estuary and regional restoration plans, and tally habitat acreage restored at a national scale.

The Act recognizes the importance of monitoring to the success of any estuarine restoration program. It requires NOAA, in consultation with the Council, to establish monitoring requirements for projects funded under the Act. Those standards may be found at: *http://www.era.noaa.gov/information/monitor.html.* They are based on NOAA's two-volume Science-Based Restoration Monitoring of Coastal Habitats, which provides standard data

formats for project monitoring, along with requirements for types of data collected and frequency of monitoring. The first volume (A Framework for Monitoring Plans Under the Estuaries and Clean Water Act of 2000) contains a framework for the creation of a monitoring plan. The second volume (Tools for Monitoring Coastal Habitats) contains detailed discussions of the habitats and their characteristics, along with a variety of additional information. These documents are available at the URL listed above.

The Council will continue to promote monitoring of estuarine restoration projects with other agencies and when considering funding projects. In addition, the Council will prioritize projects with monitoring plans that measure the effectiveness of the climate change adaptation components of the project design. Project monitoring, however, must be scaled to the project's scope, and level of risk.

Mechanisms To Support the Estuary Restoration Act Strategy

Solicitation Process

The solicitation for estuarine habitat restoration projects incorporates elements that must be considered as described in Section 104(c) of the Act, where the Council determines which projects to recommend for funding. Other elements within the solicitation include an equitable geographic distribution of projects, a balance of large and small projects, and encouragement of demonstration of innovative technology. The solicitation for estuarine habitat restoration project proposals will describe more specifically the criteria that the Council will use to prioritize climate change adaptation projects, as well as other ranking criteria.

Efficient Project Financing and Implementation

As part of the Estuary Restoration Act, the Council was established to encourage the restoration of estuary habitat through more efficient project financing and implementation. The Council and its partners are developing processes to improve the efficiency at which the projects are implemented.

Science of Restoration Monitoring

In 2008 NOAA entered into a partnership with the National Estuarine Research Reserve Program to estimate the long-term success of restoration techniques. Grants were awarded to five National Estuarine Research Reserves (Wells, ME; Narragansett Bay, RI; Chesapeake Bay, VA; North Carolina; South Slough, OR) for this work. Project goals included: Establish reference transects for measuring vegetation, groundwater/tidal inundation, soil and pore water properties; monitor reference and restoration sites to determine restoration "success" at individual sites; determine restoration technique effectiveness; and assess best monitoring parameters to determine success. In 2011 a final report will articulate outcomes including reference site data that can be used by other restoration practitioners and an analysis of the success of past salt marsh restoration projects.

Socio-Economic Monitoring

Building on previous socio-economic efforts, NOAA has funded an external panel and three case studies to help determine the value and impact of coastal habitat restoration. These studies will produce the best methods and metrics to use in measuring the economics of restoration. NOAA, on behalf of the ERA, will continue to fund socio-economic monitoring studies to help NOAA, the four other ERA agencies, and our restoration partners consider systematic approaches for the collection of data to measure and monitor the economic outcomes of habitat restoration in the coastal zone.

National Estuaries Restoration Inventory

As required by the Act NOAA, in consultation with the Council, developed the National Estuaries Restoration Inventory (NERI) (*https://neri.noaa.gov/neri/*), which maintains a database of information concerning estuarine habitat restoration projects carried out under the Act, as well as for other projects that meet the minimum monitoring requirements. The inventory contains information on project techniques, project completion, monitoring data, and other relevant information. This database is Internet-accessible to allow widespread dissemination and use of restoration project and monitoring data. The goal is to incorporate information on estuarine projects from multiple sources. NOAA will continue to work to incorporate estuarine restoration data from all the agencies represented on the Council, including EPA's National Estuary Program On-line Reporting Tool (NEPORT), the FWS Habitat Information Tracking System (HabITS), and the Corps' Civil Works Aquatic Ecosystem Restoration database.

Trends

Understanding trends for estuarine habitat is key to an effective and efficient restoration program. Trends data provide a chronological and geographic picture of change in habitat types, thereby helping managers to recognize ecological stability or stress.

Under the auspices of the Act, two documents that measure estuarine habitat within the U.S. have been finalized in order to address the estimated historic losses, estimated current rate of loss, and extent of the threat of future loss or degradation of each type of estuary habitat. The "Status and Trends of Wetlands in the Coastal Watersheds of the Eastern United States, 1998 to 2004" (*http://www.fws.gov/wetlands/_documents/gSandT/NationalReports/StatusTrendsWetlandsCoastalWatershedsEasternUS1998to2004.pdf*) was completed in 2008. In this document, NOAA and USFWS analyzed sample plots using digital high-resolution imagery to identify wetlands and land use changes between 1998 and 2004 in the coastal watersheds of the United States adjacent to the Atlantic Ocean, Gulf of Mexico, and Great Lakes. The "Habitat Change Analysis" (*http://www.era.noaa.gov/pdfs/final_habitat_trends_report.pdf*) was completed in 2005. This document assesses the overall conditions of historic and recent degradation and loss of estuary-associated ecosystems and focuses on the extent and condition of estuarine and Great Lakes wetlands in the continental United States, using two time frames, 1930–2004 and 1992–2004.

Moving Forward

Working with public/private partners and other interested stakeholders, the Council will review and refine this Strategy over time in an iterative process, as new information becomes available, as implementation of the National Ocean Policy is initiated, and as progress toward meeting the goals of the Act is evaluated. The Council will create an Action Plan that will articulate what it will do to move forward on the principles and objectives identified in this Strategy. The Council looks forward to addressing the challenges facing estuarine habitat restoration and serving as an effective vehicle through which five Federal agencies can cooperatively direct their resources.

Dated: November 8, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–28696 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–947]

Certain Steel Grating From the People's Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Correction

On June 8, 2010, the Department of Commerce ("the Department") published the final results of the investigation for certain steel grating from the People's Republic of China ("PRC"). *See Certain Steel Grating From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32366 (June 8, 2010) ("*Final Determination*"). On July 23, 2010, the Department published the antidumping duty order pursuant to the investigation. *See Certain Steel Grating from the People's Republic of China: Antidumping Duty Order,* 75 FR 43143 (July 23, 2010) ("*Order*"). Subsequent to the announcement and release of the *Final Determination* and *Order,* the Department identified an inadvertent error in both **Federal Register** notices.

Specifically, the *Final Determination* and *Order* incorrectly reversed the headings for the "Manufacturer" and "Exporter" in the rate tables printed in the notices. As a result of these errors, the notices incorrectly indicated that a combination rate was applicable to Ningbo Haitian International Co., Ltd. ("Ningbo Haitian") as the manufacturer and Ningbo Lihong Steel Grating Co., Ltd ("Ningbo Lihong") as the exporter. *See Final Determination,* 75 FR at 32369; *see also Order,* 75 FR at 43144. The notices should have indicated that Ningbo Haitian was the exporter, and that Ningbo Lihong was the manufacturer. The revised rate table should read as follows:

Exporter	Manufacturer	Antidumping duty percent margin
Sinosteel Yantai Steel Grating Co., Ltd	Sinosteel Yantai Steel Grating Co., Ltd	136.76
Ningbo Haitian International Co., Ltd	Ningbo Lihong Steel Grating Co., Ltd	136.76
Yantai Xinke Steel Structure Co., Ltd	Yantai Xinke Steel Structure Co., Ltd	136.76
PRC-wide Entity [1]		145.18

[1] Ningbo Jiulong Machinery Manufacturing Co., Ltd., Ningbo Zhenhai Jiulong Electronic Equipment Factory and Shanghai DAHE Grating Co., Ltd. are part of the PRC-wide entity.

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: November 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. C1–2010–28688 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 14, 2010, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The period of review is May 1, 2008, through April 30, 2009. We gave interested parties an opportunity to comment on the preliminary results. The review covers nine manufacturer/exporters. Based on our analysis of the comments received, we have made certain changes for the final results. The final weighted-average dumping margins for the respondents are listed below in the "Final Results of the Review" section of this notice.

DATES: *Effective Date:* November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Minoo Hatten, 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) 482–0198 or (202) 482–1690, respectively.

Background

On June 14, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. *See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 33578 (June 14, 2010) (*Preliminary Results*). The administrative review covers Jindal Pipes Limited, Lloyds Metals & Engineers Limited and Lloyds Line Pipe Ltd. (LMEL/LLPL),[1] Lloyds Steel Industries Limited (LSIL), Maharashtra Seamless Limited, Makalu Trading Pvt. Ltd., Ratnamani Metals Tubes Ltd., Universal Tube and Plastic Ind., Ushdev International Ltd., and Uttam Galva Steels Ltd.

Since publishing the *Preliminary Results,* we extended the due date for completion of these final results from October 12, 2010, to November 5, 2010. *See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of the Final Results of Antidumping Duty Administrative Review,* 75 FR 63439 (October 15, 2010).

We invited interested parties to comment on the *Preliminary Results.* We received timely submitted case briefs from LMEL/LLPL and LSIL. We also received a timely submitted case brief from Shamrock Building Materials, Inc., an importer of subject merchandise. Additionally, we received a timely submitted rebuttal case brief from a domestic interested party, Allied Tube and Conduit Corporation. No parties requested a hearing.

[1] *See* memorandum entitled "Certain Welded Carbon Steel Standard Pipes and Tubes From India—Affiliation and Whether to Collapse Two Separate Entities" dated June 7, 2010.

We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by *Tariff Schedules of the United States, Annotated* (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Duty Absorption

As stated in the *Preliminary Results,* 75 FR at 33580, the Department has not conducted a duty-absorption inquiry as requested in this segment of the proceeding because the Court of Appeals for the Federal Circuit held that the Department lacks the authority to conduct such inquiries for reviews of transition orders. *See FAG Italia S.p.A.* v. *United States,* 291 F.3d 806, 819 (CAFC 2002). The order on certain welded carbon steel standard pipes and tubes from India is a transition order, having gone into effect in 1986.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Certain Welded Carbon Steel Standard Pipes and Tubes from India for the Period of Review May 1, 2008, through April 30, 2009" (Decision Memorandum) from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Edward C. Yang, Acting Deputy Assistant Secretary for Import Administration, dated November 5, 2010, and hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Department's Central Records Unit of the main Commerce building, Room 7046, and is accessible on the Internet at *http://trade.gov/ia.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the analysis of comments received, we have made certain changes since the *Preliminary Results.* Specifically, with respect to sales by LMEL/LLPL to trading companies, for export price we used the whole gross price as reported by LMEL/LLPL. For these sales to trading companies, we did not deduct the trading-company discount from the gross unit price as we did in the *Preliminary Results* because the trading-company discount represents the difference in price between the value paid for the goods by the trading company and the value that the trading company invoiced the final U.S. customer under LMEL/LLPL's direction. We did not deduct bank charges from export price for some sales to Indian trading companies because these bank charges were billed to the trading company and not to LMEL/LLPL. We removed the value of a credit memo from the numerator of the warranty-expense allocation and determined the value of this credit memo to be a post-sale adjustment to export price instead of a warranty expense. For transactions involved in this credit memo we used an average export price that reflects the single per-unit price to which the parties agreed in a renegotiated sales contract. Finally, for the denominator of the warranty-expense allocation we used the total quantity of sales during the period of review instead of the total quantity of entries. *See* Decision Memorandum for a full discussion of the issues.

Final Results of the Review

As a result of our review, we determine that the following percentage weighted-average dumping margins exist on certain welded carbon steel standard pipes and tubes from India for the period May 1, 2008, through April 30, 2009:

Producer and/or exporter	Margin (percent)
Lloyds Metals & Engineers Limited (LMEL) and Lloyds Line Pipe Ltd. (LLPL)	6.33
Lloyds Steel Industries Limited (LSIL)	(*)
Jindal Pipes Limited	6.33
Maharashtra Seamless Limited	6.33
Makalu Trading Pvt. Ltd	(**)
Ratnamani Metals Tubes Ltd	6.33
Universal Tube and Plastic Ind	(*)
Ushdev International Ltd	(**)
Uttam Galva Steels Ltd	(**)

* No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

** No shipments or sales subject to this review. This company reported that its supplier had knowledge that its merchandise was destined for the United States.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1).

For these final results, we divided the total dumping margins (calculated as the difference between normal value and export price) for LMEL/LLPL's importers or customers by the total number of metric tons LMEL/LLPL sold to the importers or customers. We will direct CBP to assess the resulting per-metric-ton dollar amount against each metric ton of merchandise in each importer's/customer's entries during the review period. Additionally, because we have collapsed LMEL and LLPL (*see Preliminary Results,* 75 FR at 33581), we will instruct CBP to liquidate entries of LLPL-produced merchandise at the LMEL/LLPL rate.

The Department clarified its automatic-assessment regulation on May 6, 2003. This clarification applies to entries of subject merchandise during the period of review produced by LMEL/LLPL for which LMEL/LLPL did not know its merchandise was destined

for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by LMEL/LLPL at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

Consistent with *Assessment of Antidumping Duties,* for companies which claimed they had no shipments of subject merchandise to the United States, *i.e.,* LSIL and Universal Tube and Plastic Ind., if any entries of subject merchandise produced by these entities entered into the United States during the period of review, we will instruct CBP to liquidate the unreviewed entries of merchandise at the all-others rate.

With respect to entries by companies that were not selected for individual examination, *i.e.,* Jindal Pipes Limited, Maharashtra Seamless Limited, and Ratnamani Metals Tubes Ltd., we will instruct CBP to liquidate entries of merchandise produced and/or exported by these firms at 6.33 percent, the rate established for LMEL/LLPL. *See Preliminary Results,* 75 FR at 33579.

For companies which reported that their supplier (LMEL) had knowledge that its merchandise was destined for the United States, *i.e.,* Makalu Trading Pvt. Ltd., Uttam Galva Steels Ltd., and Ushdev International Ltd., and otherwise had no shipments or sales of their own, we will instruct CBP to liquidate these entries at the assessment amounts applicable to LMEL/LLPL as discussed above.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of certain welded carbon steel standard pipes and tubes from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rates for companies under review will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period for that company; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be the all-others rate for this proceeding, 7.08 percent. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986). These deposit requirements shall remain in effect until further notice.

Notifications

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 also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: November 5, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

Appendix

1. Date of Sale
2. Universe of Sales
3. Adjustment to Sales Price
4. Warranty Expense
5. Trading-Company Discount
6. Bank Charges
7. Credit-Expense Period

[FR Doc. 2010–28685 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the Department of Commerce ("Department") initiated the sunset review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China ("PRC"). Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0219.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2000, the Department issued an antidumping duty order on certain non-frozen apple juice concentrate from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China,* 65 FR 35606 (June 5, 2000). On November 2, 2005, the Department published its most recent continuation of the order. *See Notice of Continuation of Antidumping Duty Order on Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 70 FR 66349 (November 2, 2005) ("*Notice of Continuation*"). On October 1, 2010, the Department initiated a sunset review of this order. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010).

We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the deadline date. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in the sunset review, and on October 21, 2010, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this

antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate. Apple juice concentrate is defined as all non-frozen concentrated apple juice with a brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: Frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3)(A) of the Act, we are revoking this antidumping duty order. Furthermore, although 19 CFR 351.222(i)(1)(i) identifies the fifth anniversary of the publication of the order as the effective date, in *Parkdale* v. *United States,* the Court of International Trade ("CIT") clarified that the Department's determination of the effective date of revocation is a discretionary, not a ministerial act. *See Parkdale International Ltd.* v. *U.S.,* 581 F.Supp.2d 1334 ("*Parkdale* v. *United States*") (CIT 2008). Therefore, the effective date of revocation of this antidumping duty order is November 2, 2010, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this antidumping duty order. *See Notice of Continuation.*

Effective Date of Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after November 2, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests of review.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: November 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–28678 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip 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 15, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936.

Background

On December 23, 2009, Department of Commerce ("Department") published the notice of the initiation of the antidumping duty administrative review on polyethylene terephthalate film, sheet, and strip from the People's Republic of China ("PRC"), covering the period November 6, 2008, through October 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 68229 (December 23, 2009).

On August 16, 2010, the Department published the preliminary results of this review. *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review,* 75 FR 49893 (August 16, 2010). The final results are currently due on December 14, 2010.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires the Department to issue the final results in an administrative review of an antidumping duty order 120 days after the date on which the preliminary results are published. The Department may, however, extend the deadline for completion of the final results of an administrative review to 180 days if it determines it is not practicable to complete the review within the foregoing time period. The Department may extend the time for the final results without extending the time for the preliminary results, if such final results are made not later than 300 days after the date on which the preliminary results are published. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department requires additional time to complete this review because the Department recently issued a revision of the valuation of the labor rate for the final results of the administrative review using a simple average industry-specific wage rate. The Department must analyze and consider significant issues raised in the parties' comments and post-preliminary submissions. Thus, it is not practicable to complete this review by the current due date. Therefore, we are extending the time for the completion of the final results of this review by an additional 60 days to February 12, 2011.[1]

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[1] As the 60-day extension falls on Saturday, February 12, 2011, the deadline for the final results of review will be the next business day, which is February 14, 2011.

Dated: November 8, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28674 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 101103543–0543–02]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving "Schedule 1" Chemicals, Including Production of Schedule 1 Chemicals as Intermediates, Through Calendar Year 2010

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention (CWC), through the Chemical Weapons Convention Implementation Act (CWCIA) and the Chemical Weapons Convention Regulations (CWCR), has had on commercial activities involving "Schedule 1" chemicals during calendar year 2010. BIS reminds the public that the CWC, CWCIA, or CWCR have potential impacts on commercial activities whenever Schedule 1 chemicals (*e.g.*, nitrogen mustards) are intermediates in the synthesis of other chemicals, not just when the Schedule 1 chemicals are end products. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress, which is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the CWC.

DATES: Comments must be received by December 15, 2010.

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

- *E-mail: wfisher@bis.doc.gov.* Include the phrase "Schedule 1 Notice of Inquiry" in the subject line;
- *Fax:* (202) 482–3355 (*Attn:* Willard Fisher);
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for "Schedule 1" chemicals, contact James Truske, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–1001. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC or "the Convention"), the Senate included, in Senate Resolution 75 (S. Res. 75, April 24, 1997), several conditions to its ratification. Condition 9, titled "Protection of Advanced Biotechnology," calls for the President to certify to Congress on an annual basis that "the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1." On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (*i.e.,* States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons, and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties for the purpose of achieving the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

"Schedule 1" chemicals consist of those toxic chemicals and precursors set forth in the CWC "Annex on Chemicals" and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and precursors as posing a high risk to the object and purpose of the Convention.

The CWC restricts the production of "Schedule 1" chemicals for protective purposes to two facilities per State Party. The CWC Article-by-Article Analysis submitted to the Senate in Treaty Doc. 103–21 defined the term "protective purposes" to mean "used for determining the adequacy of defense equipment and measures." Consistent with this definition, and as authorized via Presidential Decision Directive (PDD) 70, December 17, 1999, the Department of Defense (DOD) was assigned the responsibility to operate these two facilities, thereby precluding commercial production of "Schedule 1" chemicals for protective purposes in the United States. The assignment of responsibility to DOD did not establish any limitations on "Schedule 1" chemical activities that are not prohibited by the CWC. However, the Department of Defense maintains strict controls on "Schedule 1" chemicals produced at its facilities in order to ensure the accountability and proper use of such chemicals, consistent with the object and purpose of the Convention.

The provisions of the CWC that affect commercial activities involving "Schedule 1" chemicals are implemented in the CWCR (see 15 CFR 712) and in the Export Administration Regulations (EAR) (see 15 CFR 742.18 and 15 CFR 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWCR restrict commercial production of "Schedule 1" chemicals to research, medical, or pharmaceutical purposes. The CWCR also contain other requirements and prohibitions that apply to "Schedule 1" chemicals and/or "Schedule 1" facilities. Specifically, the CWCR:

(1) Prohibit the import of "Schedule 1" chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of "Schedule 1" chemicals in excess of 100 grams aggregate per calendar year (i.e., declared "Schedule 1" facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Require government approval of "declared Schedule 1" facilities (15 CFR 712.5(f));

(4) Provide that "declared Schedule 1" facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days' advance notification of establishment of new "Schedule 1" production facilities producing greater than 100 grams aggregate of "Schedule 1" chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of "Schedule 1" chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of "Schedule 1" chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

For purposes of the CWCR (see 15 CFR 710.1), "production of Schedule 1 chemicals" means the formation of "Schedule 1" chemicals through chemical synthesis, as well as processing to extract and isolate "Schedule 1" chemicals. Such production is understood, for CWCR declaration purposes, to include intermediates, byproducts, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such intermediates, byproducts, or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible, but where, under normal or design operating conditions, isolation does not occur.

Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, "Schedule 1" chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving "Schedule 1" chemicals during calendar year 2010. To allow BIS to properly evaluate the significance of any harm to commercial activities involving "Schedule 1" chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

Furthermore, it was recently brought to the attention of the Executive Council of the OPCW that a private pharmaceutical company located outside the United States utilized a production technology during which a "Schedule 1" chemical (a nitrogen mustard) was produced, as an intermediate, and then consumed to produce another chemical. This situation is currently being reviewed by the OPCW. In light of this development, BIS is seeking comments that address whether similar situations may exist in the United States.

Submission of Comments

All comments must be submitted to one of the addresses indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 15, 2010. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: November 8, 2010.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2010–28689 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2010–0082]

National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Tuesday, November 30, 2010. The primary purpose of the meeting is the discussion of relative merits of persons and companies nominated for the NMTI award.

DATES: The meeting will convene Tuesday, November 30, 2010, at 9 a.m., and adjourn at 2 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Richard Maulsby, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–8333, or by electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, United States Patent and Trademark Office, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The NMTI Nomination Evaluation Committee was established in accordance with the provisions of the NMTI Nomination Evaluation Committee's charter and the Federal Advisory Committee Act. The NMTI Nomination Evaluation Committee meeting will be closed to the public in accordance with Sections 552b(c)(6) and (9)(B) of Title 5, United States Code, because it will involve discussion of relative merits of persons and companies nominated for the NMTI. Public disclosure of this information would likely frustrate implementation of the NMTI program because premature publicity about candidates under consideration for the NMTI medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the medal.

The Secretary of Commerce is responsible for recommending to the

President prospective NMTI recipients. The NMTI Nomination Evaluation Committee makes its recommendations for the NMTI candidates to the Secretary of Commerce, who in turn makes recommendations to the President for final selection. NMTI Nomination Evaluation Committee members are drawn from both the public and private sectors and are appointed by the Secretary for three-year terms, with eligibility for one reappointment. The NMTI Nomination Evaluation Committee members are composed of distinguished experts in the fields of science, technology, business and patent law. The Chief Financial Officer and Assistant Secretary for Administration, United States Department of Commerce, with the concurrence of the Assistant General Counsel for Administration, formally determined on November 8, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6) and (9)(B). Due to closure of this meeting, copies of any minutes of the meeting will not be available. A copy of the determination is available for public inspection at the United States Patent and Trademark Office.

Dated: November 10, 2010.

Peter C. Pappas,

Chief Communications Officer of the United States Patent and Trademark Office.

[FR Doc. 2010–28802 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA037

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, December 6–14, 2010, in Anchorage, AK.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, December 8 continuing through Tuesday, December 14. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 6 and continue through Friday, December 10. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 6 and continue through Wednesday, December 8, 2010. The Enforcement Committee will meet Tuesday, December 7 from 1 p.m. to 5 p.m. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Hilton Hotel, 500 W Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: *Council Plenary Session:* The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports:

1. Executive Director's Report (including Statement of Practices and Procedures (SOPPs) revisions; report on Regional Ocean Partnerships/Marine Spatial Planning; and Coast Guard Bill).

NMFS Management Report.

ADF&G Report.

NOAA Enforcement Report.

5USCG Report.

USFWS Report.

Protected Species Report.

2. Steller Sea Lion Issues: Receive report final Biological opinion (BiOp)/Reasonable and Prudent Alternative (RPA); discuss Center of Independent Experts (CIE) review); discuss comprehensive science review options.

3. Bering Sea Aleutian Island (BSAI) Crab Management: Initial Review/Final Action on BSAI Crab Emergency Relief; Initial Review on BSAI Crab Right of First Refusal (ROFR); Receive report on BSAI Crab Rationalization 5-year review; Initial review of Pribliof Blue King Crab Rebuilding Plan; NOAA–Bering Sea Fisheries Research Foundation survey snow crab selectivity analysis (SSC only).

4. Salmon Fishery Management Plan (FMP): Review discussion paper.

5. Halibut/Sablefish Individual Fishing Quota (IFQ) Program: Initial review Community Quota Entity (CQE) area 3A purchase of D category halibut quota; Review discussion paper on CQE in Area 4B; Initial review/final action to add up to four new eligible CQE communities; Initial review/Final action on Area 4B D shares on C vessels.

6. GOA Chinook Salmon Bycatch: Review discussion paper.

7. Amendment 80 Groundfish Retention Standards (GRS) Program Changes: Initial Review of analysis.

8. Groundfish Specifications: Approve final BSAI groundfish specifications and Stock Assessment Fishery Evaluation (SAFE) reports; Approve final GOA groundfish specifications and SAFE reports.

9. Groundfish Management: Review discussion paper on Pacific Cod Jig Fishery Management; review discussion paper on Gulf of Alaska (GOA) Halibut Prohibited Species Catch (PSC); initial review of Hagemeister Island closures for walrus.

10. Staff Tasking: Review Committees and tasking (including charter permit leasing discussion.

11. Other Business.

The SSC agenda will include the following issues:

1. BSAI Crab Management.

2. Amendment 80 GRS.

3. Groundfish Specifications.

4. Hagemeister Island closures.

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 9, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–28610 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV57

Marine Mammals; File No. 15206

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Sea World, LLC, 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Brad Andrews, Responsible Party] has been issued a permit to import one beluga whale (*Delphinapterus leucas*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Laura Morse, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 31, 2010, notice was published in the **Federal Register** (73 FR 29111) that a request for a public display permit to import one male adult beluga whale from the Vancouver Aquarium Marine Science Center, British Columbia, Canada to Sea World of Texas, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 5, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–28697 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA012

Plan for Periodic Review of Regulations

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

ACTION: Notice; request for comments.

SUMMARY: The Regulatory Flexibility Act (RFA) requires that the National Marine Fisheries Service (NMFS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how NMFS will perform this review and describes the regulations that are being proposed for review during the current review-cycle.

DATES: Written comments must be received by NMFS by December 15, 2010.

ADDRESSES: You may submit comments on the plan for periodic review of regulations identified by 0648–XA012 by any of the following methods:

- *Electronic submissions:* E-mail Susan Carrillo or Michelle McGregor at *610review@noaa.gov.*
- *Mail:* Susan Carrillo, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope "Comments on 610 review").

FOR FURTHER INFORMATION CONTACT: Susan Carrillo, (301) 713–2341 for questions on rules under **SUPPLEMENTARY INFORMATION** section listed in items 1 through 22 or items 26 through 36, and contact Michelle McGregor, (301) 713–2319 for questions on rules under **SUPPLEMENTARY INFORMATION** section listed in items 14 and 22 through 25.

SUPPLEMENTARY INFORMATION:

Background

The RFA, 5 U.S.C. 601, requires that Federal agencies take into account how their regulations affect "small entities," including small businesses, small Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 requires that NMFS issue an Agenda of Regulations identifying rules the Agency is developing that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review those of its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations in effect on January 1, 1981 were to be reviewed within ten years of that date. Regulations that become effective after January 1, 1981 must be reviewed within ten years of the publication date of the final rule. Section 610(c) requires that NMFS publish annually in the **Federal Register** a list of rules it will review during the succeeding 12 months. The list must describe the rule, explain the need for it, give the legal basis for it, and invite public comment.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes several factors that NMFS will consider:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received concerning the rule from the public;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

NMFS will conduct reviews in such a way as to ensure that all rules for which a Final Regulatory Flexibility Analysis was prepared are reviewed within ten years of the year in which they were originally issued. This year, NMFS will review all such rules issued during 2001 and 2002.

The 2001–02 rules that NMFS will review by December 31, 2010 under the

Section 610 requirement of the RFA are as follows:

1. Fisheries of the Exclusive Economic Zone (EEZ) Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act (AFA) RIN 0648–AN55 (67 FR 79692, Dec. 30, 2002). NMFS issued final regulations to implement the following AFA-related amendments: Amendment 61 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 61 to the FMP for Groundfish of the Gulf of Alaska (GOA), Amendment 13 to the FMP for BSAI King and Tanner Crab, and Amendment 8 to the FMP for the Scallop Fishery off Alaska. These four amendments incorporate the provisions of the AFA into the FMPs and their implementing regulations. The management measures include: Measures that allocate the BSAI pollock among the sectors of the pollock processing industry and restrict who may fish for and process pollock within each industry sector; measures that govern the formation and operation of fishery cooperatives in the BSAI pollock fishery; harvesting and processing limits known as sideboards to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery; and measures that establish catch weighing and monitoring requirements for vessels and processors that participate in the BSAI pollock fishery. These amendments and management measures were necessary to implement the AFA. This rule was issued under the authority of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), 16 U.S.C. 1801, and the AFA.

2. Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program, RIN 0648–AL92 (67 FR 13291, Mar. 22, 2002). NMFS issued this final rule to change the Community Development Quota (CDQ) regulations for BSAI crab to allow the State of Alaska greater flexibility in establishing CDQ fishing seasons. This action was necessary to achieve the conservation and management goals for the BSAI crab CDQ program and was intended to further the objectives of the Magnuson-Stevens Act and the FMP for BSAI King and Tanner Crabs. This rule was issued under the authority of the Magnuson-Stevens Act.

3. Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2, RIN 0648–AP12 (67 FR 44392, July 2, 2002). NMFS issued this final rule to implement measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish FMP. This action extended the limited entry program for the *Illex* squid fishery for an additional year; allowed for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign fishing) in the event annual specifications are not published prior to the start of the fishing year; and allowed *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS disapproved the proposed framework measures to modify the *Loligo* squid overfishing definition and control rule; and to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action was necessary and was intended to further the objectives of the FMP and the Magnuson-Stevens Act. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

4. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium, RIN 0648–AO62 (67 FR 43558, June 28, 2002). NMFS issued this final rule to implement Amendment 14 to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Amendment 20 to the FMP for the Reef Fish Resources of the Gulf of Mexico. The final rule established a 3-year moratorium on the issuance of charter vessel or headboat (for-hire) permits for the reef fish fishery and coastal migratory pelagics fishery in the exclusive economic zone of the Gulf of Mexico. Also, as a consequence of the moratorium, the current charter vessel/headboat permit for coastal migratory pelagic fish was restructured to provide separate permits for the Gulf of Mexico and South Atlantic. The intended effect of this final rule was to cap the number of for-hire vessels operating in these respective fisheries at the current level while the Gulf of Mexico Fishery Management Council evaluated the need for further management actions that may be needed to rebuild these fishery resources, and promote attainment of optimum yield. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

5. Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Prohibition on Fishing for Pelagic Management Unit Species; Nearshore Area Closures Around American Samoa by Vessels More Than 50 Feet in Length, RIN 0648–AL41 (67 FR 4369, Jan. 30, 2002). NMFS issued this final rule to prohibit certain vessels from fishing for Pacific pelagic management unit species within nearshore areas seaward of 3 nautical miles (nm) to approximately 50 nm around the islands of American Samoa. This prohibition was applied to vessels that measure more than 50 ft (15.2 m) in length overall and that did not land pelagic management unit species in American Samoa under a Federal longline general permit prior to November 13, 1997. This action was intended to prevent the potential for gear conflicts and catch competition between large fishing vessels and locally based small fishing vessels. Such conflicts and competition could lead to reduced opportunities for sustained participation by residents of American Samoa in the small-scale pelagic fishery. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

6. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, RIN 0648–AP78 (67 FR 50292, Aug. 1, 2002). In this interim final rule, NMFS implemented interim measures intended to reduce overfishing on species managed under the Northeast Multispecies FMP. Specifically, this interim final rule implemented additional restrictions specified in the Settlement Agreement Among Certain Parties ("Settlement Agreement"), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. The additional measures included the following: A freeze on days-at-sea at the highest annual level used from fishing years 1996–2000 (beginning May 1, 1996, through April 30, 2001) and a 20-percent cut from that level; a freeze on the issuance of new open access Hand-gear permits, and a decreased cod, haddock, and yellowtail flounder possession limit for that category; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; restrictions on yellowtail flounder catch; and mandated observer coverage levels for all gear sectors in the Northeast multispecies fishery. This interim final rule also continued many of the measures contained in an earlier interim final rule that was published on April 29, 2002, for this fishery. This action was necessary to bring the regulations governing the fishery into compliance with the Settlement Agreement and the Court's Remedial

Order. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

7. Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures, RIN 0648–AN75 (67 FR 40232, June 12, 2002). NMFS issued a final rule under the FMP for the Pelagic Fisheries of the Western Pacific Region to implement the reasonable and prudent alternative of the March 29, 2001, Biological Opinion issued by NMFS under the Endangered Species Act (ESA). This rule was intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. The rule applies to the owners and operators of all vessels fishing for pelagic species under Federal western Pacific limited access longline permits (longline vessels) within the U.S. EEZ and the high seas around Hawaii, as well as those fishing for pelagic species with other types of hook-and-line gear (non-longline pelagic vessels) within the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands (western Pacific region). This rule prohibits the targeting of swordfish north of the equator by longline vessels, closes all fishing to longline vessels during April and May in waters south of the Hawaiian Islands (from 15°N. lat. to the equator, and from 145°W. long. to 180° long.), prohibits the landing or possessing of more than 10 swordfish per fishing trip by longline vessels fishing north of the equator, allows the re-registration of vessels to Hawaii longline limited access permits only during the month of October, requires all longline vessel operators to annually attend a protected species workshop, and requires utilization of sea turtle handling and resuscitation measures on both longline vessels and non-longline pelagic vessels using hook-and-line gear. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

8. Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2002 Specifications, 0648–AP37 (67 FR 3442, Jan. 24, 2002). In addition to issuing final specifications for the 2002 Atlantic herring fishery, as required by the FMP for Atlantic Herring, this rule corrected and clarified the final rule implementing the FMP by clarifying the vessel owners' or operators' reporting requirements. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

9. Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery, 0648–AO35 (67 FR 34408, May 14, 2002). NMFS issued a final rule under the FMP for the Pelagic Fisheries of the Western Pacific Region that requires owners and operators of all vessels registered for use under a Hawaii longline limited access permit and operating with longline gear north of 23°N. lat. to employ a line-setting machine with weighted branch lines or use basket-style longline gear, and to use thawed blue-dyed bait and strategic offal discards during setting and hauling of longlines. The final rule also required that the owners and operators of these vessels follow certain seabird handling techniques and annually complete a protected species educational workshop conducted by NMFS. The final rule followed an emergency interim rule published on June 12, 2001, and was implemented to permanently codify the terms and conditions contained in a biological opinion issued on November 28, 2000, by the U.S. Fish and Wildlife Service and intended to afford protection to the endangered short-tailed albatross. The final rule also implemented management measures that were recommended by the Western Pacific Fishery Management Council and published in a proposed rule on July 5, 2000. These measures were designed to minimize interactions between seabirds and the Hawaii-based longline fishery. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

10. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Atlantic Deep-Sea Red Crab Fishery Management Plan, RIN 0648–AP76 (67 FR 63222, Oct. 10, 2002). NMFS issued this final rule to implement approved measures contained in the Atlantic Deep-Sea Red Crab FMP. These regulations implemented the following measures: A limited access program for the directed fishery; a target total allowable catch level; a Days-at-Sea allocation effort control program; permitting and reporting requirements, including an Interactive Voice Response system for limited access vessels; trip limits and incidental harvest allowances; trap/pot limits; processing-at-sea restrictions; and a framework adjustment process, among other measures. The intended effect of this final rule was to implement permanent management measures for the Atlantic deep-sea red crab fishery and to prevent overfishing of the red crab resource. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

11. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Experimental Setnet Sablefish Landings To Qualify Limited Entry Sablefish-Endorsed Permits for Tier Assignment, RIN 0648–AP39 (67 FR 65902, Oct. 29, 2002). NMFS approved a regulatory amendment to revise sablefish tier qualifications for the limited entry, fixed gear, and primary sablefish fishery. The final rule was issued to amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38°N. lat. Setnet EFP landings will be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This rule was intended to recognize historical sablefish landings made by current primary season participants. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

12. Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements, RIN 0648–AO20 (67 FR 4100, Jan. 28, 2002). NMFS issued a final rule to amend portions of the regulations implementing recordkeeping and reporting requirements for groundfish fisheries in the EEZ off Alaska. This action was necessary to refine or correct regulations for improved management, to remove obsolete text, and to clarify and simplify existing text. This action was intended to facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This rule was issued under the authority of the Northern Pacific Halibut Act (Halibut Act), 16 U.S.C. 773, and the Magnuson-Stevens Act, 16 U.S.C. 1801.

13. Fisheries of the Exclusive Economic Zone Off Alaska; Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program, RIN 0648–AQ05 (67 FR 72595, Dec. 6, 2002). NMFS issued a final rule to extend the applicability date of the existing regulations for the interim North Pacific Groundfish Observer Program (Observer Program), which otherwise expired December 31, 2002, through 2007. This final rule also amended regulations governing the Observer Program. These changes clarified and improved observer certification and decertification

processes; changed the duties and responsibilities of observers and observer providers to eliminate ambiguities and strengthen the regulations; and granted NMFS the authority to place NMFS staff and other qualified persons aboard vessels and at shoreside or floating stationary plants to increase NMFS' ability to interact effectively with observers, fishermen, and processing plant employees. These parts of the action were necessary to improve Observer Program support of the management objectives of the FMP for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA for those industry sectors already subject to such requirements. The intended effect was better managed fishery resources that result in the effective conservation of marine resources and habitat. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

14. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations, RIN 0648–AN88 (67 FR 1300, Jan. 10, 2002). NMFS issued this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan to provide further protection for large whales, with an emphasis on protective measures to benefit North Atlantic right whales. This final rule expanded gear modifications required by a December 2000 interim final rule to the Mid-Atlantic and Offshore lobster waters and modified requirements for gillnet gear in the mid-Atlantic. This rule was issued under the authority of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361.

15. Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Harvest Quotas, Definitions, Size Limits, Gear Restrictions, and Bed Classification, RIN 0648–AK23 (67 FR 11941, Mar. 18, 2002). NMFS partially approved a regulatory amendment under the FMP for Precious Coral Fisheries of the Western Pacific Region submitted by the Western Pacific Fishery Management Council and issued a final rule that implemented gear restrictions, size limits, and definitions governing the harvest of precious coral resources managed under the FMP. (Precious coral management measures that were published in the proposed rule that applied only to the Northwestern Hawaiian Islands were not implemented by NMFS because they were determined to be inconsistent with certain provisions of Executive Order 13178 and Executive Order 13196, which together established the NWHI Coral Reef Ecosystem Reserve.) This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

16. Fisheries Off West Coast States and in the Western Pacific; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Implementation of the Shark Finning Prohibition Act (Act), RIN 0648–AP21 (67 FR 6194, Feb. 11, 2002). NMFS published this final rule to implement the provisions of the Act. The final rule prohibited any person under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. Finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. This final rule was issued in accordance with the requirement of the Act that the Secretary of Commerce issue regulations to implement the Act. The final rule did not alter or modify shark finning regulations already in place in the Atlantic for Federal permit holders. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

17. Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery; Sea Turtle and Whale Protection Measures, RIN 0648–AP49 (67 FR 45393, July 9, 2002). This final rule implemented measures required by the June 14, 2001, Biological Opinion on Atlantic highly migratory species (Atlantic HMS) fisheries. In the Atlantic HMS pelagic longline fishery, NMFS closed the northeast distant statistical reporting (NED) area, required the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibited vessels from having hooks on board other than corrodible, non-stainless steel hooks. In the Atlantic HMS shark gillnet fishery, both the observer and vessel operator must look for whales, the vessel operator must contact NMFS if a listed whale is taken, and shark gillnet fishermen must conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals from their gear. This final rule also required all Atlantic HMS bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse. The intent of these actions was to reduce the incidental catch and post-release mortality of sea turtles and other protected species in Atlantic HMS fisheries. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

18. Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area, RIN 0648–AM40 (67 FR 18129, Apr. 15, 2002). NMFS issued this final rule to implement Amendment 67 to the FMP for the Groundfish BSAI. This action was necessary to stabilize fully utilized Pacific cod resources harvested with hook-and-line and pot gears in the BSAI. This was accomplished by issuing endorsements for exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries by long-time participants. The final rule also added a new definition for directed fishing for CDQ fisheries and clarified discard provisions for the individual fishing quota and CDQ fisheries. The intended effect of this action is to conserve and manage the Pacific cod resources in the BSAI. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

19. Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska, RIN 0648–AP79 (67 FR 70859, Nov. 27, 2002). NMFS issued this final rule to implement Amendment 60 to the FMP for Groundfish of the GOA. This amendment prohibited the use of non-pelagic trawl gear in Cook Inlet. This action was necessary to address bycatch avoidance objectives in the Magnuson-Stevens Act, and was intended to further the goals and objectives of the FMP for Groundfish of the GOA. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

20. Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures, RIN 0648–AO69 (67 FR 10490, Mar. 7, 2002). NMFS issued this final rule to implement the 2002 fishery specifications and management measures for groundfish taken in the U.S. EEZ and State waters off the coasts of Washington, Oregon, and California. Management measures were intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations to the extent practicable. This rule was issued under

the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

21. Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program, RIN 0648–AK70 (67 FR 20915, Apr. 29, 2002). NMFS issued this final rule to implement Amendment 54 to the FMP for the Groundfish Fishery of the BSAI, Amendment 54 to the FMP for Groundfish of the GOA (Amendments 54/54), and an amendment to the Pacific halibut commercial fishery regulations for waters in and off Alaska. These amendments made three changes in the Individual Fishing Quota (IFQ) Program to: (1) Allow a quota share (QS) holder's indirect ownership or affiliation to a vessel, through corporate or other collective ties, to substitute for vessel ownership in the QS holder's own name for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of "a change in the corporation or partnership" to include language that explicitly specifies the point at which estates holding initial allocations of QS must transfer the QS to a qualified individual; and (3) revise sablefish use limits to be expressed in QS units rather than as percentages of the QS pool. This action was intended to improve the effectiveness of the IFQ Program. This action was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, and the Halibut Act, 16 U.S.C. 773.

22. Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters, RIN 0648–AP81 (67 FR 41196, June 17, 2002). NMFS prohibited the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay effective immediately through June 30 and then from May 8 to June 30 each year. The affected area includes all Chesapeake Bay waters between the Maryland and Virginia State line (approximately 38°N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. NMFS also imposed year round reporting and, when requested, monitoring requirements for the Virginia pound net fishery. This action was necessary to conserve sea turtles listed as threatened or endangered and to enable the agency to gather further information about sea turtle interactions in the pound net fishery. This rule was issued under the authority of the ESA, 16 U.S.C. 1531.

23. Endangered and Threatened Species; Take of Four Threatened Evolutionarily Significant Units of West Coast Salmon; 4(d) Rule, RIN 0648–AP17 (67 FR 1116, Jan. 10, 2002). Under the ESA, the Secretary of Commerce issues regulations as necessary and advisable for the conservation of species listed as "threatened." This rule was issued to conserve four salmonid "evolutionarily significant units" or ESUs in California: California Central Valley Chinook, California Coastal Chinook, Central California Coast Coho and Northern California steelhead. The rule prohibited "take" of these four ESUs, subject to a number of exceptions. This rule was issued under the authority of the ESA, 16 U.S.C. 1531.

24. Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program, RIN 0648–AP68 (67 FR 1142, Jan. 9 2002). NMFS issued this interim final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a Seasonal Area Management (SAM) program. The SAM program defines two areas based on the annual predictable presence of North Atlantic right whales in which gear restrictions for lobster trap and anchored gillnet gear are required. This action was necessary due to the critical status of the North Atlantic right whale population. The intent of the action was to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear. This rule was issued under the authority of the MMPA, 16 U.S.C. 1361.

25. Regulations Governing the Approach to Humpback Whales in Alaska, RIN 0648–AN29 (66 FR 29502, May 31, 2001). This rule established measures to protect humpback whales in waters within 200 nautical miles of Alaska. Under these regulations it is unlawful for a person subject to the jurisdiction of the United States to approach, by any means, with some exceptions, within 100 yards of a humpback whale. The primary objective of limiting approaches around humpback whales was to minimize disturbance that could adversely affect the individual animal and to manage the threat to these animals caused by whale watching activities. The humpback whale is listed as endangered under the ESA. This rule was issued under the authority of the ESA, 16 U.S.C. 1531, and the MMPA, 16 U.S.C. 1361.

26. Fisheries of the Exclusive Economic Zone Off Alaska; Improved Individual Fishing Quota Program, RIN 0648–AK50 (66 FR 27908, May 14, 2001). This rule amended regulations implementing the IFQ Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. NMFS identified parts of the program that needed further refinement or correction for effective management of the affected fixed gear fisheries. This action effected those refinements and was necessary to further the objectives of the Magnuson-Stevens Act with respect to the IFQ fisheries. This rule was issued under the authority of the Halibut Act, 16 U.S.C. 773, and the Magnuson-Stevens Act, 16 U.S.C. 1801.

27. Fisheries of the Exclusive Economic Zone off Alaska; Western Alaska Community Development Quota Program, RIN 0648–AM72 (66 FR 13672, Mar. 7, 2001). This final rule implemented Amendment 66 to the FMP for the Groundfish Fishery of the BSAI. Amendment 66 removed the allocation of squid to the Western Alaska CDQ Program to prevent the catch of squid from limiting the catch of pollock CDQ. The regulatory amendment defining directed fishing for pollock CDQ implemented the intent of the AFA that only pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

28. Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Definition of Length Overall of a Vessel, RIN 0648–AN23 (66 FR 47416, Sept. 12, 2001). This final rule clarified the definition of length overall (LOA) of a vessel for the purposes of the regulations governing the groundfish fisheries in the EEZ off Alaska. The action was intended to prevent any misunderstanding or equivocation by vessel owners in determining a vessel's LOA, and to further the goals and objectives of the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

29. Fisheries of the Exclusive Economic Zone off Alaska; License Limitation Program, RIN 0648–AL95 (66 FR 48813, Sept. 24, 2001). This final rule implemented Amendment 60 to the FMP for the Groundfish Fishery of the BSAI, Amendment 58 to the FMP for Groundfish of the GOA, and Amendment 10 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI. This rule was necessary to implement changes to the License Limitation Program made by these amendments and was intended to further the objectives of the Magnuson-

Stevens Act and the three FMPs. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

30. Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crab Fishery; Closed Area, RIN 0648–AO02 (66 FR 8906, Feb. 5, 2001). NMFS issued this final rule to prohibit fishing for horseshoe crabs and limit possession of them in an area in the EEZ encompassing a 30-nautical mile radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay. The intent of the final rule was to provide protection for the Atlantic coast stock of horseshoe crab and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's Interstate FMP for horseshoe crab. This rule was issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101.

31. Fisheries of the Northeastern United States, Fishery Management Plan for Tilefish, RIN 0648–AF87 (66 FR 49136, Sept. 26, 2001). This final rule was issued to implement the FMP for Tilefish. Specifically, it was designed to eliminate overfishing, as defined in that FMP, and to rebuild the tilefish stock in the northwest Atlantic Ocean by implementing: a stock rebuilding strategy; a limited entry program; a tiered commercial quota; permit and reporting requirements for commercial vessels, operators, and dealers; a prohibition on the use of gear other than longline gear by limited-access tilefish vessels; and an annual specification and framework adjustment process. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

32. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program, RIN 0648–AN27 (66 FR 20609, April 24, 2001). NMFS issued this final rule to amend the regulations implementing the Pacific Coast Groundfish FMP to provide for an at-sea observation program on all limited entry and open access catcher vessels. It required vessels in the groundfish fishery to carry observers when notified by NMFS or its designated agent; established notification requirements for vessels that may be required to carry observers; and established responsibilities and defined prohibited actions for vessels that are required to carry observers. The at-sea observation program was intended to improve estimates of total catch and fishing mortality. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

33. Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 14, RIN 0648–AL51 (66 FR 29238, May 30, 2001). NMFS issued this final rule to implement portions of Amendment 14 to the FMP for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California. The final rule made minor changes to language regarding spawning escapement and management goals; implemented a new recreational allocation to the Port of La Push and adjusted the Neah Bay allocation accordingly; added preseason flexibility for recreational port allocations north of Cape Falcon; and implemented preseason flexibility in setting recreational port allocations or recreational and commercial allocations north of Cape Falcon to take advantage of selective fishing opportunities for marked hatchery fish. The intended effect of the final rule was to employ management measures that minimize impacts to species, stocks, or size/age classes of concern, while maximizing access to harvestable fish. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

34. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 13, RIN 0648–AO41 (66 FR 29729, June 1, 2001). NMFS issued this final rule to implement Amendment 13 to the Pacific Coast Groundfish FMP. It established an increased utilization program for catcher/processor and mother ships in the at-sea whiting fisheries which carry multiple observers for at least 90 percent of the fishing days during a cumulative trip limit period, by revising the regulatory provisions for the routine management measures process, and by removing regulatory references to limited entry permit endorsements other than the "A" endorsement. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

35. Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 14, RIN 0648–AO97 (66 FR 41152, Aug. 7, 2001). This rule implemented Amendment 14 to the Pacific Coast Groundfish FMP, which created a permit stacking program for limited entry permits with sablefish endorsements. The program was intended to lengthen the duration of the limited entry, fixed gear primary sablefish fishery; increase safety in that fishery; provide flexibility to participants; and reduce capacity in the limited entry fixed gear fleet. This rule was issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801.

36. International Fisheries Regulations; Pacific Tuna Fisheries, RIN 0648–AO42 (66 FR 49317, Sept. 27, 2001). This rule was issued to implement fishery conservation and management measures for the U.S. purse seine fishery in the eastern Pacific Ocean (EPO) to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species. These measures were recommended by the Inter-American Tropical Tuna Commission (IATTC) and approved by the U.S. Department of State, in accordance with the Tuna Conventions Act of 1950. In addition, this rule established reporting requirements for U.S. vessels fishing for tuna in the EPO in order to gather information that NMFS could provide to the IATTC for a regional vessel register. The vessel register was created to promote consistent compliance across all IATTC member nations by ensuring constant attention to fleets active in the area and aiding in identification of vessels engaged in illegal, unreported or undocumented fishing in the EPO. This rule was issued under the authority of the Tuna Conventions Act, 16 U.S.C. 1801.

Dated: November 8, 2010.

Brian Parker,

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

[FR Doc. 2010–28700 Filed 11–12–10; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete a product from the Procurement List previously furnished by such agency.

DATES: *Effective Date:* 12/13/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone:

(703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 9/3/2010 (75 FR 54115) and 9/17/2010 (75 FR 56995–56996), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Undershirts, Extreme Cold Weather Clothing System (Layer 2), Gen III

NSN: 8415–01–538–8598—Undershirt, Midweight Cold Weather, Gen III Size S.

NSN: 8415–01–538–8614—Undershirt, Midweight Cold Weather, Gen III Size M–R.

NSN: 8415–01–538–8621—Undershirt, Midweight Cold Weather, Gen III Size L.

NSN: 8415–01–538–8701—Undershirt, Midweight Cold Weather, Gen III Size L–L.

NSN: 8415–01–538–8705—Undershirt, Midweight Cold Weather, Gen III Size XL.

NSN: 8415–01–538–8711—Undershirt, Midweight Cold Weather, Gen III Size XL–L.

NSN: 8415–01–546–0124—Undershirt, Midweight Cold Weather, Gen III Size XS–S.

NSN: 8415–01–546–0128—Undershirt, Midweight Cold Weather, Gen III Size XS–R.

NSN: 8415–01–546–0160—Undershirt, Midweight Cold Weather, Gen III Size S–S.

NSN: 8415–01–546–0166—Undershirt, Midweight Cold Weather, Gen III Size S–L.

NSN: 8415–01–546–0305—Undershirt, Midweight Cold Weather, Gen III Size M–L.

NSN: 8415–01–546–0362—Undershirt, Midweight Cold Weather, Gen III Size XL–XL.

NSN: 8415–01–546–0369—Undershirt, Midweight Cold Weather, Gen III Size XXL–R.

NSN: 8415–01–546–0370—Undershirt, Midweight Cold Weather, Gen III Size XXL–L.

NSN: 8415–01–546–0374—Undershirt, Midweight Cold Weather, Gen III Size XXL–XL.

NPAs: Bestwork Industries for the Blind, Inc., Runnemede, NJ. Westmoreland County Blind Association, Greensburg, PA.

Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA.

Coverage: C–List for 25% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Service

Service Type/Location: Property Management Service, National Park Service Horace M. Albright Training Center, 1 Albright Avenue, Grand Canyon, AZ.

NPA: Trace, Inc., Boise, ID.

Contracting Activity: DEPT OF THE INTERIOR, NATIONAL PARK SERVICE, DENVER SERVICE CENTER (DSC), DENVER, CO.

Deletion

On 9/17/2010 (75 FR 56995–56996), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

NSN: 7510–01–510–4857—Looseleaf Binder, 3–Ring, Black 1/2".

NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.

Contracting Activity: GSA/FEDERAL ACQUISITION SERVICE, NEW YORK, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–28623 Filed 11–12–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by the nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 12/13/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition: If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons

who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification: I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification: The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Janitorial Service, Customs and Border Protection, Riverside Air and Marine Branch, 373 Graeber Street, March ARB, CA.

NPA: ARC Riverside, Riverside, CA

Contracting Activity: DEPT OF HOMELAND SECURITY, BUREAU OF CUSTOMS AND BORDER PROTECTION, WASHINGTON, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–28624 Filed 11–12–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, November 17, 2010; 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 9, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–28785 Filed 11–10–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, November 17, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: *Decisional Matter:* Publicly Available Consumer Product Safety Information Database—Final Rule.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.* For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 9, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–28789 Filed 11–10–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Notice of Federal Advisory Committee Meeting

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meetings of the Advisory Council on Dependents' Education will take place.

DATES: *Meeting 1:* Friday, December 10, 2010 from 8 a.m. to 11 a.m. Eastern Standard Time.

Meeting 2: Friday, December 17, 2010 from 12 p.m. to 4 p.m. Central European Time and 6 a.m. to 10 a.m. Eastern Standard Time via Video-teleconference (VTC).

ADDRESSES: *Meeting 1:* 4040 North Fairfax Drive, Arlington, VA 22203.

Meeting 2: Best Western Hotel Riedstern, Stahlbaustrasse 17, Riedstadt, Germany 64560.

Meeting 2: VTC, 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Leesa Rompre at (703) 588–3128 or *Leesa.Rompre@hq.dodea.edu.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meetings:* Recommend to the Acting Director DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Acting Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.

Agendas: The meeting agendas will reflect current DoDDS schools operational status, educational practices, and other educational matters that come before the council.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, these meetings are open to the public. Seating is on a first-come basis. The purpose of the VTC meeting on December 17 is to provide the public in the United States access to the meeting held at the location in Germany.

Committee's Point of Contact: Ms. Leesa Rompre at (703) 588–3128, 4040 North Fairfax Drive, Arlington, VA 22203 or *Leesa.Rompre@hq.dodea.edu.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Rompre at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Advisory Council on Dependents' Education about its mission and functions. Written statements may be submitted at any time or in response to the stated agendas

of the planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Advisory Council on Dependents' Education, Dr. Patrick Dworakowski, 4040 North Fairfax Drive, Arlington, VA 22203; *Patrick.Dworakowski@hq.dodea.edu* or (703) 588–3127.

Statements being submitted in response to the agendas mentioned in this notice must be received by the DFO at the address listed above at least fourteen calendar days prior to the meeting, which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Council on Dependents' Education until its next meeting.

The DFO will review all timely submissions with the Advisory Council on Dependents' Education Chairpersons and ensure they are provided to all members of the Advisory Council on Dependents' Education before the meeting that is the subject of this notice.

Oral Statements by the Public to the Membership: Pursuant to 41 CFR 102–3.140(d), time will be allotted for public comments to the Advisory Council on Dependents' Education. Individual comments will be limited to a maximum of five minutes duration. The total time allotted for public comments will not exceed thirty minutes.

Dated: November 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–28643 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Military Leadership Diversity Commission (MLDC)

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting of the Military Leadership Diversity Commission (MLDC) will take place:

DATES: December 2, 2010, from 8 a.m. to 4:30 p.m. and December 3, 2010, from 8 a.m. to 5:15 p.m.

ADDRESSES: December 2–3, 2010—Radisson Plaza Lord Baltimore, 20 West Baltimore Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail: *steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

December 2, 2010

8 a.m.–12:30 p.m.
DFO opens the meeting.
Commission Chairman opening remarks.
General Lyles discusses work of leadership subcommittee.
Deliberation of implementation and accountability recommendations.
Deliberation of National Guard and Reserve recommendations.
12:30 p.m. DFO recesses the meeting.
1:30 p.m.–4:30 p.m.
DFO opens the meeting.
Deliberation of "Rooney-like" rule regarding flag officer promotions.
Deliberation of Combat exclusion policy.
Public Comments.
DFO adjourns the meeting.

December 3, 2010

8 a.m.–12:45 p.m.
DFO opens the meeting.
Commission Chairman opening remarks.
General Lyles discusses work of editorial subcommittee.
Review of editorial subcommittee work.
Presentation of collapsed recommendation list—Part I.
Deliberation of collapsed recommendation list—Part I.
12:45 p.m. DFO recesses the meeting.
1:45 p.m.–5:15 p.m.
DFO opens meeting.
Presentation of collapsed recommendation list—Part II.
Deliberation of collapsed recommendation list—Part II.
Public comments.
Commission Chairman closing remarks.
DFO adjourns the meeting.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on December 2 through 3, 2010 will be open to the public. Please note that the availability of seating is on a first-come basis.

Committee's Designated Federal Officer or Point of Contact: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (571) 882–0140, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail: *steven.Hady@wso.whs.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for its consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: November 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–28641 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board (PRB)

AGENCY: Department of Defense, Defense Threat Reduction Agency (DTRA).

ACTION: Notice of PRB membership.

SUMMARY: This notice announces the appointment of DTRA's PRB membership. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB shall provide fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, Defense Threat Reduction Agency.

DATES: *Effective Date:* The effective date of service for the appointees of the DTRA PRB is on or about November 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tana Farrell at (703) 767–5759 or Lisa Shipe at (703) 767–0425, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, VA 22060–6201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the officials appointed to serve as members of the DTRA PRB are set forth below:

PRB Chair: Major General John Howlett.

Member: Mr. Douglas Bruder.

Member: Ms. Shari Durand.

Member: Mr. Kevin Flanagan.

Executives listed will serve a one-year term, effective November 1, 2010.

Dated: November 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–28642 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0152]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 2, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 3, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 34 DoD

SYSTEM NAME:

Defense Civilian Personnel Data System (April 21, 2006, 71 FR 20649).

SYSTEM LOCATION:

Delete entry and replace with "Lockheed Martin Information Systems, 1401 Del Norte St., Denver, CO 80221; Testing and Operations, 1777 N.E. Loop 410, Suite 300, San Antonio, TX 78217.

A list of secondary (Component regional) locations may be obtained by written request to DoD Civilian Personnel Management Service (CPMS), 1400 Key Boulevard, Suite B200, Arlington, VA 22209–5144."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian employees and job applicants for civilian appropriated/non-appropriated fund (NAF), local nationals (LN), and National Guard (NG) civilian technician positions in the Department of Defense (DoD)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Position authorization and control information; position descriptions and performance elements; personnel data and projected suspense information for personnel actions; pay, benefits, and entitlements data.

Historical information on employees, including job experience, education, training, and training transaction data; performance plans, interim appraisals, final appraisals, closeouts and ratings; professional accounting or other certifications or licenses; awards information and merit promotion information; separation and retirement data; civilian deployment information and adverse and disciplinary action data.

Personnel information including Social Security Number (SSN), employee number, emergency contact information, employee e-mail address, employee phone numbers to include home, work, pager, fax, and mobile; race and national origin; handicap code; and foreign language capability. In addition, transmits data and updates to Corporate Management Information System (CMIS) and Customer Support Unit (CSU)."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Department Regulations; 5 U.S.C. Chapter 11, Office of Personnel Management; 5 U.S.C. Chapter 13, Special Authority; 5 U.S.C. Chapter 29, Commissions, Oaths, Records, and Reports; 5 U.S.C. Chapter 31, Authority for Employment; 5 U.S.C. Chapter 33, Examination, Selection, and Placement; 5 U.S.C. Chapter 41, Training; 5 U.S.C. Chapter 43, Performance Appraisal; 5 U.S.C. Chapter 51, Classification; 5

U.S.C. Chapter 53, Pay Rates and Systems; 5 U.S.C. Chapter 55, Pay Administration; 5 U.S.C. Chapter 61, Hours of Work; 5 U.S.C. Chapter 63, Leave; 5 U.S.C. Chapter 72, Antidiscrimination; Right to Petition Congress; 5 U.S.C. Chapter 75, Adverse Actions; 5 U.S.C. Chapter 83, Retirement; 5 U.S.C. Chapter 99, Department of Defense National Security Personnel System; 5 U.S.C. 7201, Antidiscrimination Policy; minority recruitment program; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E. O. 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, as amended; 29 CFR part 1614.601, EEO Group Statistics; and E. O. 9397 (SSN), as amended."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Name and/or employee number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed and/or maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. User names and passwords and/or Common Access Cards (CACs) are employed to ensure access is limited to authorized personnel only. Employees are able to access and view only their records and update certain personal information to them via user name and password. Security systems and/or security guards protect buildings where records are accessed or maintained. A risk assessment has been performed and will be made available on request."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained for 25 years after an individual separates from the government and then the records are purged."

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain individual's name and Social Security Number (SSN)."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Prospective employee generated resume, Standard Form 171, or Optional Form 612; employee or supervisor generated training requests; human resources generated records; employee generated data recorded as Self Certified; and other employee or supervisor generated records. Data is also received from various interfaces; Defense Manpower Data Center; Defense Civilian Payroll System; Joint Personnel Adjudication System; Air Force Manpower Interface; National Guard Bureau Military Data Upload; NAF Payroll; Resumix; and Training."

* * * * *

DPR 34 DoD

SYSTEM NAME:

Defense Civilian Personnel Data System.

SYSTEM LOCATION:

Lockheed Martin Information Systems, 1401 Del Norte St., Denver, CO 80221; Testing and Operations, 1777 NE. Loop 410, Suite 300, San Antonio, TX 78217.

A list of secondary (Component regional) locations may be obtained by written request to DoD Civilian Personnel Management Service (CPMS), 1400 Key Boulevard, Suite B200, Arlington, VA 22209–5144.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and job applicants for civilian appropriated/non-appropriated fund (NAF), local nationals (LN), and National Guard (NG) civilian technician positions in the Department of Defense (DoD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Position authorization and control information; position descriptions and performance elements; personnel data and projected suspense information for personnel actions; pay, benefits, and entitlements data.

Historical information on employees, including job experience, education, training, and training transaction data; performance plans, interim appraisals, final appraisals, closeouts and ratings; professional accounting or other certifications or licenses; awards information and merit promotion information; separation and retirement data; civilian deployment information and adverse and disciplinary action data.

Personnel information including Social Security Number (SSN), employee number, emergency contact information, employee email address, employee phone numbers to include home, work, pager, fax and mobile; race and national origin; handicap code; and foreign language capability. In addition, transmits data and updates to Corporate Management Information System (CMIS) and Customer Support Unit (CSU).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations; 5 U.S.C. Chapter 11, Office of Personnel Management; 5 U.S.C. Chapter 13, Special Authority; 5 U.S.C. Chapter 29, Commissions, Oaths, Records, and Reports; 5 U.S.C. Chapter 31, Authority for Employment; 5 U.S.C. Chapter 33, Examination, Selection, and Placement; 5 U.S.C. Chapter 41, Training; 5 U.S.C. Chapter 43, Performance Appraisal; 5 U.S.C. Chapter 51, Classification; 5 U.S.C. Chapter 53, Pay Rates and Systems; 5 U.S.C. Chapter 55, Pay Administration; 5 U.S.C. Chapter 61, Hours of Work; 5 U.S.C. Chapter 63, Leave; 5 U.S.C. Chapter 72, Antidiscrimination; Right to Petition Congress; 5 U.S.C. Chapter 75, Adverse Actions; 5 U.S.C. Chapter 83, Retirement; 5 U.S.C. Chapter 99, Department of Defense National Security Personnel System; 5 U.S.C. 7201, Antidiscrimination Policy; minority recruitment program; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E. O. 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, as amended; 29 CFR part 1614.601, EEO Group Statistics; and E. O. 9397 (SSN), as amended.

PURPOSE(S):

To establish a system of records to provide Human Resource information and system support for the DoD civilian workforce worldwide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed and/or maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. User names and passwords and/or Common Access Cards (CACs) are employed to ensure access is limited to authorized personnel only. Employees are able to access and view only their records and update certain personal information to them via user name and password. Security systems and/or security guards protect buildings where records are accessed or maintained. A risk assessment has been performed and will be made available on request.

RETENTION AND DISPOSAL:

Records are retained for 25 years after an individual separates from the government and then the records are purged.

SYSTEM MANAGERS AND ADDRESS:

Civilian Personnel Management Service, 1400 Key Boulevard, Suite B200, Arlington, VA 22209–5144.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to: Civilian Personnel Management Service, 1400 Key Boulevard, Suite B200, Arlington, VA 22209–5144.

Written requests should contain individual's name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the individual's name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Prospective employee generated resume, Standard Form 171, or Optional Form 612; employee or supervisor generated training requests; human resources generated records; employee generated data recorded as self certified; and other employee or supervisor generated records. Data is also received from various interfaces; Defense Manpower Data Center; Defense Civilian Payroll System; Joint Personnel Adjudication System; Air Force Manpower Interface; National Guard Bureau Military Data Upload; NAF Payroll; Resumix; and training.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–28755 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0154]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Defense Information Systems Agency is proposing to add a system of records to its inventory of records system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705, Ms. Jeanette M. Weathers-Jenkins at (703) 681–2409.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on November 3, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.15 DoD

SYSTEM NAME:

Active Directory Enterprise Application and Services Forest (AD EASF).

SYSTEM LOCATION:

System locations may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) personnel who have been issued DoD Common Access Cards (CAC) or a DoD Class 3 Public Key Infrastructure (PKI) certificate to include civilian employees, military personnel, contractors and other individuals detailed or assigned to DoD Components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name (last name, first name, middle initial); unique identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not Social Security Number), Federal Agency Smart Credential Number (FASC–N), login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, Defense Switched Network (DSN) phone, other fax, other mobile, other pager, city, zip code, post office box, street address, state, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; US government agency code; service code; personnel category code; non-US government agency object common name; user account control; information technology service entitlements; and Public Key Infrastructure (PKI) certificate information, including Personal Identity Verification Authentication (PIV Auth) certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, Identity (ID) certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID Common Name (CN), signature certificate e-mail address, Signature Subject Alternative Name User Principal Name (UPN), Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Public Binary Certificate, Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; and DoD Directive 5105.19, Defense Information Systems Agency (DISA).

PURPOSE(S):

The AD EASF will control access and provide contact information for users of DoD Enterprise E–Mail, workspace and collaboration tools, file storage, and office applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The DoD 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal government personnel. Defense-in-Depth methodology is used to protect the repository and interfaces, including (but not limited to) multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the AD EASF system integrity and the data confidentiality.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to get information about themselves contained in this system of records should address written inquiries to the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work email address, telephone number, assigned office or unit, and complete mailing address.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting content and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

RECORD SOURCE CATEGORIES:

The DoD Identity Synchronization Service (IdSS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–28754 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0153]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Defense Information Systems Agency is proposing to add a system of records to its inventory of records system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/

Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705, Ms. Jeanette M. Weathers-Jenkins at (703) 681–2409.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on November 3, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.14 DoD

SYSTEM NAME:

Identity Synchronization Service (IdSS).

SYSTEM LOCATION:

System locations may be obtained from the systems manager at the Defense Information Systems Agency (DISA), Computing Services Division (CSD), 5600 Columbia Pike, Falls Church, VA 22204–4502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense (DoD) personnel who have been issued DoD Common Access Cards (CAC) or a DoD Class 3 Public Key Infrastructure (PKI) certificate to include civilian employees, military personnel, contractors and other individuals detailed or assigned to DoD Components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name (last name, first name, middle initial); unique identifiers including Electronic Data Interchange Person Identifier (EDI PI), other unique identifier (not Social Security Number), Federal Agency Smart Credential Number (FASC–N), login name, legacy login name, and persona username; object class; rank; title; job title; persona type code (PTC); primary and other work e-mail addresses; persona display name (PDN); work contact information, including administrative organization, duty organization, department, company (derived), building, address, mailing address, country, organization, phone, fax, mobile, pager, Defense Switched Network (DSN) phone, other fax, other mobile, other pager, city, zip code, post office box, street address, state, room number, assigned unit name, code and location, attached unit name, code and location, major geographical location, major command, assigned major command, and base, post, camp, or station; US government agency code; service code; personnel category code; non-US government agency object common name; user account control; information technology service entitlements; and Public Key Infrastructure (PKI) certificate information, including Personal Identity Verification Authentication (PIV Auth) certificate issuer, PIV Auth certificate serial number, PIV Auth certificate principal name, PIV Auth Subject Alternative Name, PIV Auth Thumbprint, PIV Auth Issuer, PIV Auth Common name, Identity (ID) certificate issuer, ID certificate serial number, ID certificate principal name, ID Thumbprint, ID Common Name (CN), signature certificate e-mail address, Signature Subject Alternative Name User Principal Name (UPN), Signature Thumbprint, Signature Issuer, Signature serial number, Signature CN, Public Binary Certificate, Encryption Thumbprint, Certificate Issuer, Encryption Serial Number, Encryption CN, distinguished name, PKI login identity, e-mail encryption certificate, and other certificate information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and DoD Directive 5105.19, Defense Information Systems Agency (DISA).

PURPOSE(S):

The IdSS will populate and maintain persona-based user objects in DoD enterprise-level Domain Controllers, such as the Active Directory Enterprise Application and Services Forest (AD EASF) being implemented by DISA to provide DoD Enterprise E–Mail, workspace and collaboration tools, file storage, and office applications. In addition, the system may used to populate and maintain persona data elements in DoD component networks and systems, such as directory services and account provisioning systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal Government personnel. Defense-in-Depth methodology is used to protect the repository and interfaces, including (but not limited to) multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the IdSS system integrity and the data confidentiality.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records

Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Defense Information Systems Agency (DISA), Center for Computing Services, P.O. Box 4502, Arlington, VA 22204–4502.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should e-mail *idss@disa.mil* or address written inquiries to Defense Information Systems Agency (DISA), Center for Computing Services, P.O. Box 4502, Arlington, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work e-mail address, telephone number, assigned office or unit, and complete mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to get information about themselves contained in this system of records should e-mail *idss@disa.mil* or address written inquiries to Defense Information Systems Agency (DISA), Center for Computing Services, P.O. Box 4502, Arlington, VA 22204–4502.

Requests must include the individual's full name, rank, grade or title, component affiliation, work email address, telephone number, assigned office or unit, and complete mailing address.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting content and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system.

RECORD SOURCE CATEGORIES:

DoD Component directories (such as Army Enterprise Directory Service-Lite (EDS–Lite) and the Air Force Directory Service (AFDS)), the Defense Eligibility Enrollment Reporting System (DEERS), and the DISA DoD PKI Global Directory Service (GDS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–28752 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Defense Health Board (hereafter referred to as the "Board").

The Board is a non-discretionary Federal advisory committee that shall provide independent scientific advice and recommendations on matters relating to:

a. Operational programs;

b. Health policy development;

c. Health research programs and requirements for the treatment and prevention of disease and injury; and

d. Promotion of health and delivery of efficient, effective and high quality health care services to Department of Defense beneficiaries.

The Board is not established to provide advice on individual DoD procurements. No matter shall be assigned to the Board for its considerations that would require any Board members to participate personally and substantially in the conduct of an specific procurement or place him or her in the position of acting as a contracting or procurement official.

The Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness), may act upon the advice and recommendations of the Board.

The Board shall be composed of not more than 30 members who are eminent authorities within their respective disciplines related to clinical health care, disease and injury prevention, health care delivery and administration, and/or strategic decision-making in government, industry or academia.

The Board members shall be appointed by the Secretary of Defense, and their appointments must be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees.

Members may serve for periods up to four years. Such appointments will normally be staggered among the Board membership to ensure an orderly turnover in the Board's overall composition on a periodic basis. No Board member shall serve more than four consecutive years on the Board. Regular government officers or employees who participate in DoD's decision-making process for this Board are prohibited from serving on the Board or its subcommittees.

With the exception of travel and per diem for official travel, Board members shall normally serve without compensation, unless the Secretary of Defense authorizes compensation for a particular member(s).

The Secretary of Defense, after considering the recommendation of the Under Secretary of Defense (Personnel and Readiness), shall appoint the President of the Board from the Board membership. The Under Secretary of Defense (Personnel and Readiness), prior to his recommendation, may consult the Board membership. No Board member shall serve more than four years as Board President.

The Board shall select from within its membership a First Vice President and a Second Vice President. The First Vice President shall undertake the duties of the President in his or her absence, or as requested by the President of the Board. The Second Vice President shall fulfill this role as necessary.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed by the Secretary of Defense according to governing DoD policy and procedures. Such individuals, if not full-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed on an annual basis.

FOR FURTHER INFORMATION: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Board's President. The estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance for the full duration at all Board and subcommittee meetings; however, in the absence of the Designated Federal Officer, an Alternate Designated Federal Officer shall attend the entire Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Health Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Health Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Health Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Health Board Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Health Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: November 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–28753 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2010–1]

Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: Pursuant to 42 U.S.C. 2286a(a)(5), the Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy requesting an amendment to the Department of Energy's nuclear safety rule, 10 CFR part 830.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before December 15, 2010.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone number (202–694–7000).

Dated: November 9, 2010.

Peter S. Winokur,

Chairman.

RECOMMENDATION 2010–1 TO THE SECRETARY OF ENERGY

Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers

Pursuant to 42 U.S.C. § 2286a(a)(5) Atomic Energy Act of 1954, As Amended

Dated: October 29, 2010

Background

The Department of Energy's (DOE) nuclear safety regulations were developed as a result of a mandate by Congress in the Price Anderson Act Amendments of 1988. These regulations now appear in Parts 820, 830, and 835 of Title 10 in the Code of Federal Regulations (CFR). In this Recommendation, the Defense Nuclear Facilities Safety Board (Board) addresses recent changes in DOE's "interpretation" of certain critical provisions of Title 10 CFR Part 830, Nuclear Safety Management (10 CFR Part 830), provisions which are intended to provide adequate protection of the public health and safety. As explained below, in the Board's view this revised interpretative posture weakens the safety structure the rule is designed to hold firmly in place.

10 CFR Part 830 imposes a requirement that a documented safety analysis, or DSA, is to be prepared for every DOE nuclear facility. This DSA, once approved by DOE, forms the regulatory basis for safety of the facility or operation. 10 CFR Part 830 does more, however: its Appendix A provides "safe harbors" for the preparation and approval of DSAs. These safe harbors are, in the main, references to detailed guidance issued by DOE. A DSA that is prepared following applicable guidance found in "safe harbors" should be found acceptable, meaning that the facility's safety systems are adequate to protect public health and safety from nuclear hazards.

One of the key safe harbor guides for the preparation of DSAs is DOE Standard 3009–94, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports.[1] First issued in July of 1994, this Standard was intended to provide guidance on meeting the requirements imposed by DOE Order 5480.23, Nuclear Safety Analysis Reports, a set of nuclear safety requirements that preceded and were supplanted by 10 CFR Part 830. The Standard stated that "Technical Standards, such as this document, support the guides by providing additional guidance into how the requirements [of Orders and Rules] should be met." As such, it did not contain any nuclear safety requirements. Five years after its initial issuance, DOE amended Standard 3009–94 by the addition of Appendix A, entitled "Evaluation Guidelines." These guidelines apply dose criteria to the results of accident calculations found in DSAs. Stated broadly, the Evaluation Guidelines mandate that safety class systems be installed if, as a result of a potential accident, the unmitigated dose consequences at the site boundary approach or exceed 25 rem Total Effective Dose Equivalent (TEDE).

When 10 CFR Part 830 was promulgated in final form in early 2001, the version of DOE Standard 3009–94 incorporated into Appendix A of the rule as a safe harbor included the Evaluation Guidelines. This combination of the rule's requirement for an approved DSA and the application of the Evaluation Guidelines of DOE Standard 3009–94 formed the basis upon which adequate protection of the public health and safety would be gauged. Whenever dose consequence calculations showed that an accident scenario would result in offsite doses approaching or exceeding 25 rem TEDE, safety class systems would have to be chosen and installed to reduce this dose to a small fraction of the Evaluation Guidelines.

Developments Since 2001

As a safe harbor for 10 CFR Part 830, the Evaluation Guidelines described in DOE Standard 3009–94 have been enforced and met for the majority of DOE's defense nuclear facilities, assuring adequate protection to the public, workers, and the environment. However, in December 2008, the National Nuclear Security Administration (NNSA) approved a DSA for the Plutonium Facility at Los Alamos National Laboratory that represented a significant departure from the accepted methodology, as discussed in the Board's Recommendation 2009–2, Los Alamos National Laboratory Plutonium

[1] When DOE issued Change Notice 2, the title of this Standard was revised to Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses.

Facility Seismic Safety. The Board followed up its Recommendation with a letter to the Deputy Secretary of Energy on March 15, 2010, that sought to determine whether DOE's current interpretation of 10 CFR Part 830 and DOE Standard 3009–94 still supports the principles of providing adequate protection of the public, workers, and the environment from the hazards of operating DOE's defense nuclear facilities. The Board's letter particularly expressed concern regarding the appearance that DOE's present interpretation is that nuclear safety Evaluation Guidelines established in DOE Standard 3009–94 do not have to be met.

DOE's June 10, 2010, response to the Board's letter states that DOE's utilization and implementation of DOE Standard 3009–94 has not changed since issuance of 10 CFR Part 830. DOE's response observes that DOE Standard 3009–94 "was not written as a prescriptive item-by-item requirements document; rather it provides an overall approach and guidance for preparing a DSA." DOE's response states that the Standard describes steps that the contractor may take if the postulated accident consequences cannot be mitigated below the Evaluation Guideline. DOE's response also cites guidance for DOE approval authorities contained in DOE Standard 1104–2009, Review and Approval of Nuclear Facility Safety Basis and Safety Design Basis Documents, and notes that the Safety Basis Approval Authority may prescribe interim controls and planned improvements if the Evaluation Guideline is exceeded. DOE's response closes by stating that its managers "are expected to carefully evaluate situations that fall short of expectations and only provide their approval of documented safety analyses when they are satisfied that operations can be conducted safely…, that options to meet DOE expectations have been evaluated, and that adequate commitments to achieve an appropriate safety posture in a timely manner have been made."

The lack of definitive statements in DOE's June 10, 2010, response illustrates the difficulties inherent in applying a guidance document as a safe harbor for implementing the requirements of a regulation. Furthermore, NNSA's approval of the DSA for the Los Alamos National Laboratory's Plutonium Facility in December 2008 demonstrates that, despite DOE's stated expectations, it is not always true that DOE's managers will ensure safety by imposing conditions of approval that address inadequacies in the safety basis. This is illustrated to a lesser extent at the other NNSA facilities—described in follow-up correspondence NNSA issued to the Board on June 30, 2010—which have not implemented controls or compensatory measures sufficient to reduce accident consequences below the Evaluation Guideline. DOE Standard 1104–2009 serves as a source of guidance for DOE Safety Basis Approval Authorities, but it, too, is a guidance document, unequivocally stating, "This Standard does not add any new requirements for DOE or its contractors."

DOE's standards-based regulatory system needs a clear and unambiguous set of nuclear safety requirements to ensure that adequate protection of the public, workers, and the environment is provided. Further, it is imperative that DOE provide clear direction to its Safety Basis Approval Authorities to ensure that, if nuclear safety requirements cannot be met prior to approval of a DSA, DOE imposes clear conditions of approval for compensatory measures for the short term and facility modifications for the longer term to achieve the required safety posture. This acceptance of risk and commitment to future upgrades must be approved at a level of authority within DOE that is high enough to control both the resources needed to accomplish the upgrades as well as the programmatic decision-making involved in determining that the risk of continuing operations is offset by sufficiently compelling programmatic needs.

Item 4 of the Recommendation below deserves a further word of explanation. The Board does not recommend lightly a change to DOE's nuclear safety regulations. But as explained above, DOE has chosen over the past several years to drift away from the principles that underlay the rule as originally intended. The Board has chosen to recommend a rule change because this action would tend, in the long run, to prevent future shifts in DOE safety policy that would once again have to be challenged and argued against. For these reasons, the Board recommends that the nuclear safety rule, 10 CFR Part 830, be amended as stated below.

Recommendation

Therefore, the Board recommends that DOE:

1. Immediately affirm the previously understood requirement that unmitigated, bounding-type accident scenarios will be used at DOE's defense nuclear facilities to estimate dose consequences at the site boundary, and that a sufficient combination of structures, systems, or components must be designated safety class to prevent exposures at the site boundary from approaching or exceeding 25 rem TEDE.

2. For those defense nuclear facilities that have not implemented compensatory measures sufficient to reduce exposures at the site boundary below 25 rem TEDE, direct the responsible program secretarial officer to develop a plan to meet this requirement within a reasonable timeframe.

3. Revise DOE Standard 3009–94 to identify clearly and unambiguously the requirements that must be met to demonstrate that an adequate level of protection for the public and workers is provided through a DSA. This should be accomplished, at a minimum, by:

a. Clearly defining methodologies and providing acceptability criteria for controls, parameters, processes, analytical tools, and other data that should be used in preparation of a DSA.

b. Delineating the criteria to be met for identification and analyses of an adequate set of Design Basis Accidents (for new facilities), or Evaluation Basis Accidents (for existing facilities).

c. Providing criteria that must be met by the safety-class structures, systems, and components to (i) mitigate the consequences to a fraction of the Evaluation Guideline, or (ii) prevent the events by demonstrating an acceptable reliability for the preventive features.

d. Establishing a process and path forward to meeting (a) through (c) above through compensatory measures and planned improvements if the DSA cannot demonstrate compliance.

4. Amend 10 CFR Part 830 by incorporating the revised version of DOE Standard 3009–94 into the text as a requirement, instead of as a safe harbor cited in Table 2.

5. Formally establish the minimum criteria and requirements that govern federal approval of a DSA, by revision to DOE Standard 1104–2009 and other appropriate documents. The criteria and requirements should include:

a. The authorities that can be delegated, the required training and qualification of the approval authority, and the boundaries and limitations of the approval authority's responsibilities,

b. Actions to be taken if conditions are beyond the specified boundaries and limitations of the approval authority,

c. The organization or the individual who can approve a DSA that is beyond the delegated approval authority's boundaries and limitations,

d. The regulatory process that must be followed if condition are beyond the specified boundaries and limitations of the approval authority, and any compensatory actions to be taken, and

e. The criteria the approval authority must use to quantify the acceptance of risk for continued operations when offsite dose consequences have not been reduced to a small fraction of the Evaluation Guideline.

6. Formally designate the responsible organization and identify the processes for performing oversight to ensure that the responsibilities identified in Item 5 above are fully implemented.

Peter S. Winokur,

Chairman.

[FR Doc. 2010–28683 Filed 11–12–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for the Draft Programmatic Environmental Assessment for the Development and Operation of Small-Scale Wind Energy Projects at United States Marine Corps Facilities Throughout the United States

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code 4321), as implemented by the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 Code of Federal

Regulations [CFR] parts 1500–1508), and Marine Corps NEPA directives (Marine Corps Order P5090.2A), the Department of the Navy announces the availability of, and invites public comments on the Draft Programmatic Environmental Assessment (Draft PEA) for the development and operation of small-scale wind energy projects at United States Marine Corps (USMC) facilities throughout the Continental United States (CONUS). A PEA evaluates a major action on a broad, programmatic basis. Thus, site-specific NEPA analysis may be tiered off this document as appropriate.

Dates and Addresses: The public comment period begins upon publication of a Notice of Availability (NOA) for the Draft PEA in the **Federal Register.** The 30-day public comment period will end on December 4, 2010.

The Draft PEA is available for electronic viewing at *http://marines.mil/unit/marforres/MFRHQ/FACILITIES/FACILITIES.aspx,* or by sending a request to Alain Flexer, USMC Marine Forces Reserves (MARFORRES), by telephone 504–678–8489, by fax 504–678–6823, by e-mail to *alain.flexer@usmc.mil* or by writing to: MARFORRES, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, Louisiana 70146–5400.

Comments: All comments, written or submitted via the internet, are treated equally, become part of the public record on the Draft PEA, and will be considered in the Final PEA. During the 30-day comment period, all written comments should be mailed to MARFORRES, Attn: Alain Flexer, 4400 Dauphine Street, New Orleans, LA 70146–5400. Please submit all comments by December 4, 2010.

FOR FURTHER INFORMATION CONTACT: MARFORRES, Attn: Alain Flexer, telephone 504–678–8489 or by e-mail *alain.flexer@usmc.mil.*

SUPPLEMENTARY INFORMATION: MARFORRES (Energy Office) has completed a Draft PEA for the development and operation of small-scale wind energy projects at USMC CONUS facilities. The USMC considered ten priority sites at which wind is the most readily available and economically feasible renewable energy source, therefore, this Draft PEA does not consider other forms of renewable energy.

The purpose of the proposed action is to reduce dependency on fossil fuels and increase energy security and efficiency through development of small-scale wind energy projects at USMC CONUS facilities. The proposed action would enable MARFORRES to achieve specific goals regarding energy production and usage set by Executive Orders, legislative acts, and Federal agencies.

The Draft PEA evaluates the potential environmental impacts of three action alternatives and the No Action Alternative. Alternative 1 involves site, design, construct, and operate one to four small wind turbines at USMC facilities. Alternative 2 involves site, design, construct, and operate one to four medium wind turbines at USMC facilities. Alternative 3 involves site, design, construct, and operate one or two large wind turbines at USMC facilities. Under the No Action Alternative, the USMC would not pursue the development and operation of small-scale wind energy projects at USMC CONUS facilities.

Environmental resources addressed in the Draft PEA include land use; noise; geological resources; water resources; biological resources; cultural resources; visual resources; socioeconomics; air quality; utilities; airspace; health and safety; hazardous materials; and transportation. The Draft PEA also analyzes cumulative impacts from other past, present, and reasonably foreseeable future actions.

Schedule: NOA of the Draft PEA will be published in the **Federal Register**. This notice initiates the 30-day public comment period for the Draft PEA. If the Draft PEA determines a more thorough analysis is necessary, then the USMC will prepare an Environmental Impact Statement (EIS). If additional analysis is not necessary, the USMC will issue a Finding of No Significant Impact (FONSI). The USMC intends to issue the Final PEA no later than December 2010, at which time a NOA of the FONSI or Notice of Intent (NOI) to prepare an EIS will be published.

Dated: November 5, 2010.

D. J. Werner,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–28613 Filed 11–12–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0026]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

A0608–10 CFSC

Child Development Services (CDS) (February 22, 1993, 58 FR 10002).

REASON:

The Child Development Services (CDS) is covered under system of records notice A0215 FMWRC, General Morale, Welfare, Recreation and Entertainment Records (July 7, 2008, 73 FR 38420); therefore the notice can be deleted.

[FR Doc. 2010–28751 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0025]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on December 15, 2010 unless comments are received which result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 2, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 3, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350–1e TRADOC

SYSTEM NAME:

Life Long Learning Center.

SYSTEM LOCATION:

Commander, U.S. Army Training Center, Training Capability Manager—Army Training Information System (TCM–ATIS), 3308 Wilson Avenue (ATIC–SD), Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resident and distance learning course data to include scheduling, testing, academic, graduation, personnel and attrition data. It will include Army Knowledge Online (AKO) name and User Identification only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 350–1, Army Training and Leader Development; FM 7–0, Train the Force; TRADOC Regulation 350–70, Systems Approach to Training Management Processes and Products, and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Life Long Learning Center (LLC) allows Army centers of excellence (COEs) and Army schools to provide a web-based content delivery system for their resident courses and provide Army centers of excellence (COEs) and Army schools with the ability to offer the same resident training at off-site—Virtual Campus locations to the Army National Guard and Army Reserve units. It enables Army proponent schools to provide resident courses to deployed units to enable assignment oriented training and training updates. It supports individual creativity, team collaboration, peer review, instructor-led and self-paced training and education. The system provides a learning content management or learning content delivery platform that provides synchronous and asynchronous access to training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media storage.

RETRIEVABILITY:

Retrieved by AKO name/User Identification (UID).

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals in the performance of official duties, who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Records are kept in current file area until no longer needed for conducting business, then retire to Records Holding Area (RHA)/Army Electronic Archive (AEA). The RHA/AEA will retire the record to National Records Personnel Center (NPRC) Annex, 1411 Boulder Drive, Rock City Industrial Center, Valmeyer, IL 62295–2603 when record

is 10 years old. NRPC will destroy the record when 40 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Training Center, Training Capability Manager—Army Training Information System (TCM–ATIS), 3308 Wilson Avenue (ATIC–SD), Fort Eustis, VA 23604–5166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center (ATIC), 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details, which may assist in locating records, and their signature. In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1747, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center (ATIC), 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details, which may assist in locating records, and their signature. In addition, the requestor must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1747, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, personnel, training systems, and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–28750 Filed 11–12–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). The Act requires that agencies publish these notices in the **Federal Register**. The Charter of the Commission can be found at: *http://www.OilSpillCommission.gov*.

DATES: December 2, 2010, 9 a.m.–5 p.m., and December 3, 2010, 9 a.m.–4 p.m.

ADDRESSES: 1777 F St., NW., Washington, DC 20006; telephone number: 1–202–254–2600.

FOR FURTHER INFORMATION CONTACT: Christopher A. Smith, Designated Federal Officer, Mail Stop: FE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 1–202–586–0716 or facsimile 1–202–586–6221; e-mail: *BPDeepwater HorizonCommission@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to examine the relevant facts and circumstances concerning the root cause of the BP Deepwater Horizon explosion, fire, and oil spill and to develop options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

The Commission is composed of seven members appointed by the President to serve as special Government employees. The members were selected because of their extensive scientific, legal, engineering, and environmental expertise, and their knowledge of issues pertaining to the oil and gas industry. Information on the Commission can be found at its Web site: *http://www.Oil.SpillCommission.gov*.

Purpose of the Meeting: To discuss relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion, fire, and oil spill, and options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

Tentative Agenda: The meeting is expected to start on December 2, 2010 at 9 a.m. Commission discussions are expected to begin shortly thereafter and will conclude at approximately 4:30 p.m. Public comments can be made on December 2, 2010 from 4:30 p.m. to 5 p.m. The meeting will continue on December 3, 2010 at 9 a.m. and conclude around 4 p.m. The final agenda will be available at the Commission's Web site: *http://www.OilSpillCommission.gov*.

Public Participation: The meeting is open to the public, with seats available on a first-come, first-serve basis. Those not able to attend the meeting may view the meeting live on the Commission's Web site: *http://www.OilSpillCommission.gov.* The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will be three minutes. Opportunity for public comment will be available on December 2, 2010 tentatively from 4:30 p.m. to 5 p.m. Registration for those wishing to request an opportunity to speak opens onsite at 8 a.m. on December 2.

Speakers will register to speak on a first-come, first-serve basis. Members of the public wishing to provide oral comments are encouraged to provide a written copy of their comments for collection at the time of onsite registration.

Those individuals who are not able to attend the meeting, or who are not able to provide oral comments during the meeting, are invited to send a written statement to Christopher A. Smith, Mail Stop FE–30, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or e-mail:

BPDeepwaterHorizionCommission@hq.doe.gov.

Minutes: The minutes of the meeting will be available at the Commission's Web site: *http://www.OilSpillCommission.gov* or by contacting Mr. Smith. He may be reached at the postal or e-mail addresses above.

Accommodation for the hearing impaired: A sign language interpreter will be onsite for the duration of the meeting.

Issued in Washington, DC, on November 9, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–28645 Filed 11–12–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–015]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool From the Department of Energy Residential Clothes Washer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–015) that grants to Whirlpool Corporation (Whirlpool) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers. Under today's decision and order, Whirlpool shall be required to test and rate its clothes washers with larger clothes containers using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *E-mail: Michael.Raymond@ee.doe.gov.*

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 287–6111, *E-mail: Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Whirlpool a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that Whirlpool tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Whirlpool from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on November 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Whirlpool Corporation (Case No. CW–015).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291–6309. Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential clothes washers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Whirlpool's Petition for Waiver: Assertions and Determinations

On November 21, 2005, Whirlpool filed a petition for waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, Whirlpool requested a waiver to test its clothes washers on the basis of the residential test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 extended to larger container volumes. Whirlpool's petition was published in the **Federal Register** on August 22, 2006. 71 FR 48913. DOE received one comment on the Whirlpool petition, from a private citizen who opined that the purpose of waivers is to evade regulations.

In its petition, Whirlpool pointed out that the required mass of the test load used in DOE's test procedure is based on the basket volume of the test specimen. However, the test procedure does not define required test load masses for the basket sizes of Whirlpool's basic models cited in its

waiver application, which are larger than those contemplated by the test procedure. Specifically, in the DOE test procedure, the relation between basket volume and test load mass is only defined for basket volumes between 0 and 3.8 cubic feet. Whirlpool has designed a series of clothes washers that contain basket volumes of greater than 3.8 cubic feet. On June 22, 2010 and July 20, 2010, General Electric Company (GE) and Samsung Electronics America, Inc. (Samsung), respectively, filed very similar petitions for waiver and applications for interim waivers for their clothes washers with basket volumes greater than 3.8 cubic feet. DOE granted GE and Samsung's interim waivers on September 16, 2010. (75 FR 57915; 75 FR 57937).

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Whirlpool has submitted a proposed revised table to extend the maximum basket volume from 3.8 cubic feet to 5.1 cubic feet, a table similar to one developed by the Association of Home Appliance Manufacturers (AHAM) and provided to DOE in comments on a proposed DOE residential clothes washer test procedure rulemaking. The notice of proposed rulemaking (NOPR) was published September 21, 2010 (75 FR 57556). When the residential clothes washer test procedure rulemaking process is complete, any amended test procedure will supersede the alternate test procedure described in this waiver. AHAM provided calculations to extrapolate Table 5.1 of the DOE test procedure to larger container volumes. DOE believes that this is a reasonable procedure because the DOE test procedure defines test load sizes as linear functions of the basket volume. AHAM's extrapolation was performed on the load weight in pounds, and AHAM appears to have used the conversion ratio of 1/2.2 (or 0.45454545) to convert pounds to kilograms. Whirlpool used the more accurate conversion value of 0.45359237 (which Samsung also used in its similar petition), rounding the results in kilograms to two decimal places. The Table 5.1 in the clothes washer NOPR referenced above has some small differences with the Table 5.1 used by Whirlpool and Samsung. The differences are due to rounding which Samsung and Whirlpool applied too early. The largest difference is 0.5%. The Table 5.1 values here are from DOE's NOPR. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Whirlpool petition for waiver. The FTC staff did not have any objections to granting a waiver to Whirlpool.

IV. Conclusion

After careful consideration of all the material that was submitted by Whirlpool, the interim waivers granted to GE and Samsung, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Whirlpool Corporation (Case No. CW–015) is hereby granted as set forth in the paragraphs below.

(2) Whirlpool shall not be required to test or rate the following Whirlpool models on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix J1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

Brand	Model No.
Amana	NFW7600X*
Kenmore	2803*
Kenmore	2804*
Kenmore	2803*
Kenmore	2804*
Kenmore	2706*
Kenmore	2707*
Kenmore	2708*
Kenmore	2709*
Kenmore	2808*
Kenmore	n/a
Kenmore	2806*
Kenmore	2807*
Kenmore	2808*
Kenmore	2809*
Kenmore	2808*
Kenmore	2809*
Maytag	MHWE950W*
Maytag	MHWE550W*
Maytag	MHWE400W*
Maytag	MHWE450W*
Maytag	MTW6300TQ1
Maytag	MTW6500TQ1
Maytag	MTW6600T*1
Maytag	MTW6700TQ1
Maytag	MVWB400VW0
Maytag	MVWB700VW0
Maytag	MVWB800VW0
Maytag	MVWB300W*
Maytag	MVWB450W*
Maytag	MVWB750W*
Maytag	MVW7000X*
Maytag	MHW6000X*
Maytag	MVWB850W*
Whirlpool	WFW9750W*
Whirlpool	WFW9470W*
Whirlpool	WTW9451X*
Whirlpool	WTW6200S2
Whirlpool	WTW6200V*
Whirlpool	WTW6400S2
Whirlpool	WTW6600S2
Whirlpool	WTW6700T0
Whirlpool	WTW6300W*
Whirlpool	WTW6340W*
Whirlpool	WTW6700T*
Whirlpool	WTW7300X*
Whirlpool	WTW7340X*
Whirlpool	WFW94HEX*
Whirlpool	WFW95HEX*
Whirlpool	WFW97HEX*
Whirlpool	WTW7600X*
Whirlpool	WTW7800X*
Whirlpool	WTW6500W*
Whirlpool	WTW6800W*
Whirlpool	WTW7990X*

(3) Whirlpool shall be required to test the products listed in paragraph (2) above according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that, for the Whirlpool products listed in paragraph (2) only, the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.80	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.00	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.20	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.40	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.60	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.90	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.10	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.30	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.50	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.70	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

NOTES: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

(4) *Representations.* Whirlpool may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on November 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–28646 Filed 11–12–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Efficiency and Renewable Energy Advisory Committee (ERAC)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the first meeting of the Energy Efficiency and Renewable Energy Advisory

Committee (ERAC). The Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770, requires that public notice of this meeting be announced in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please e-mail *erac@ee.doe.gov* at least five business days before the meeting, no later than Tuesday, November 23, 2010. In the e-mail, please indicate your name, organization (if appropriate), citizenship, and contact information. Please be aware, entry to the DOE Forrestal building will be restricted to those who have confirmed their attendance in advance. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

DATES: Tuesday, November 30, 2010; 8:30 a.m.–5 p.m.

ADDRESSES: Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585—Room 1E–245. Please arrive early for building entry requirements, see the Summary and Public Participation sections for more information.

FOR FURTHER INFORMATION CONTACT: *erac@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the Secretary of Energy on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy.

Agenda Topics: (Subject to change; updates will be posted on *http://www.eere.energy.gov/eere_advisory_committee*):

- Overview of EERE Strategies for Research, Development, Demonstration and Deployment of Energy Efficient and Renewable Energy Technologies.
- EERE initiative on building retrofits.
- EERE initiative on $1 per watt Photovoltaic systems.
- Public Comment.

Public Participation: Members of the public are welcome to observe the business of the meeting of ERAC and to make oral statements during the specified period for public comment. The public comment period will take place between 4:30 p.m. through 5 p.m. during the day of the meeting (Tuesday, November 30, 2010). To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *erac@ee.doe.gov* at least five business days before the meeting, no later than Tuesday, November 23, 2010. In the e-mail, please indicate your name, organization (if appropriate), citizenship, and contact information. Please be aware, entry to the DOE Forrestal building will be restricted to those who have confirmed their attendance in advance. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to *erac@ee.doe.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://www.eere.energy.gov/eere_advisory_committee.*

Issued in Washington, DC, on November 8, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–28640 Filed 11–12–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0929; FRL–9226–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Request for Contractor Access to TSCA Confidential Business Information; EPA ICR No. 1250.09, OMB Control No. 2070–0075

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before December 15, 2010.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2009–0929, (1) to EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mailcode:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; *e-mail address: TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 24, 2010 (75 FR 14150), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2009–0929, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution

Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Request for Contractor Access to TSCA Confidential Business Information (CBI).

ICR Numbers: EPA ICR No. 1250.09, OMB Control No. 2070–0075.

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on November 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Submitters of information to EPA under the Toxic Substances Control Act (TSCA) may claim all or part of the information confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. One such circumstance is covered by this ICR. Specifically, certain employees of companies working under contract to EPA require access to CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, EPA badge number or other identification of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 1.6 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are companies under contract to the Environmental Protection Agency to provide certain services, whose employees must have access to TSCA confidential business information to perform their duties.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 13 (rounded up from 12.5).

Estimated Number of Respondents: 30.

Estimated Total Annual Burden on Respondents: 601 hours.

Estimated Total Annual Costs: $30,253.

Changes in Burden Estimates: There is an increase of 155 hours (from 446 hours to 601 hours) in the total estimated respondent burden compared with that identified in the information collection most recently approved by OMB. This reflects an increase in the estimated number of contractor employees subject to this information collection. The increase is an adjustment.

Dated: November 8, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–28656 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0884; FRL–9226–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; EPA ICR No. 1249.09, OMB Control No. 2070–0074

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 15, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2009–0884, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *opp.ncic@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lily Negash, (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–347–8515; fax number: 703–305–5884; e-mail address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 3, 2010 (75 FR 9594), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–

HQ–OPP–2009–0884, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OPP Regulatory Public Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPP Regulatory Public Docket is (703) 305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

ICR Numbers: EPA ICR No. 1249.09, OMB Control No. 2070–0074.

ICR Status: This ICR is scheduled to expire on November 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR affects approximately 40 certified pesticide applicators who utilize 1080 toxic collars for livestock protection. Four states (Montana, New Mexico, South Dakota, and Wyoming) monitor the program, and five pesticide registrants are required to keep records of: (a) Number of collars purchased; (b) number of collars attached on livestock; (c) pasture(s) where collared livestock were placed; (d) number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage; (e) the dates of each attachment, inspection, and removal; (f) number, dates, and approximate location of all collars lost; (g) locations, and dates of all suspected poisonings of humans, domestic animals or non-target wild animals resulting from collar use location and species data on each animal poisoned as an apparent result of the toxic collar. Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the: (a) State lead agencies; (b) EPA regional offices; or (c) the registrants. The EPA receives annual monitoring reports from registrants or State lead agencies.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: pesticide and other agricultural manufacturers (NAICS 325320), *e.g.,* pesticide registrants whose products include 1080 collars; and government establishments primarily engaged in the administration of environmental quality programs (NAICS 9241), *e.g.,* states implementing a 1080 collar monitoring program.

Estimated Number of Respondents: 48.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,944 hours.

Estimated Total Annual Cost: $77,044.

Changes in the Estimates: There is a decrease of 9 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a correction in the calculation of the annual respondent burden hours from the last ICR.

Dated: November 8, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–28657 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0883; FRL–9226–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Experimental Use Permits (EUPs) for Pesticides; EPA ICR No. 0276.14, OMB Control No. 2070–0040

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 15, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2009–0883, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: Environmental Protection Agency, Pesticide Public Regulatory Docket (7502P), 1200 Pennsylvania Ave., NW, Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lily Negash, Field and External Affairs Division, Office of Pesticide Programs (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–347–8515; fax number:

703–305–5884; e-mail address: *negash.lily@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), and the procedures prescribed in 5 CFR 1320.12. On March 3, 2010, EPA sought comments on the renewal ICR (75 FR 9593), pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB no later than December 15, 2010 and in accordance with the instructions under **ADDRESSES**.

EPA has established a public docket for this ICR under Docket ID No. EPA–OPP–HQ–2009–0883, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Pesticides Public Regulatory Docket, One Potomac Yard (South Building), 2777 S. Crystal Drive, Room S–4400, Arlington, VA 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for this docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Experimental Use Permits (EUPs) for Pesticides.

ICR Numbers: EPA ICR No. 0276.14, OMB Control No. 2070–0040.

ICR Status: The current OMB approval for this ICR is scheduled to expire on November 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR renews an ongoing information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the Final Rule and in the **Federal Register** when approved, are listed in 40 CFR part 9 or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that before a pesticide product may be distributed or sold in the U.S., it must be registered by EPA. Section 5 of FIFRA authorizes EPA to issue experimental use permits (EUPs) which allow companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUP's are issued either for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency. The EUP application must be submitted in order to obtain a permit. This information collection provides the EPA with the data necessary to determine whether to issue an EUP under section 5 of FIFRA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 32.8 hours for chemical pesticides and 147 hours for plant-incorporated protectants (PIPs) per response. Burden is defined in 5 CFR 1320.3(b). The following is a summary of the burden and cost information for this ICR:

Respondents/Affected Entities: Pesticide Registrants.

Estimated Number of Respondents: 21.

Frequency of Response: On occasion.

Estimated Total Annual Responses: 10.3.

Estimated Total Annual Hour Burden: 1,907.

Estimated Total Annual Cost: $114,566.

Changes in the Estimates: There is an increase of 1150 hours from the total estimated burden currently identified in the OMB Inventory. This increase is an adjustment in the burden estimates resulting from consultations with EUP program participants, and an estimated number of EUP applications that are for PIPs compared to chemical pesticides.

Dated: November 8, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–28654 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0480; FRL–9226–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pesticide Registration Fees Program; EPA ICR No. 2330.01, OMB Control No. 2070–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection that combines two currently approved ICRs. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 15, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2008–0480, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rame Cromwell, Field and External Affairs Division, Office of Pesticide Programs (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9068; fax number: 703–305–5884; e-mail address: *cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 10, 2008 (73 FR 75092), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–

HQ–OPP–2008–0480 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Pesticide Registration Fees Program.

ICR Numbers: EPA ICR No. 2330.01, OMB Control No. 2070–new.

ICR Status: This is a new ICR that combines two currently approved ICRs. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the paperwork burden hours and costs associated with the information collection activities under the pesticide registration fee programs. Pesticide registrants are required by statute to pay an annual registration maintenance fee for all products registered under Section 3 and Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, the Pesticide Registration Improvement Act (PRIA) amended FIFRA in 2004 to create a registration service fee system for applications for specific pesticide registration, amended registration, and associated tolerance actions (FIFRA Section 33). This ICR specifically covers the activities related to both the collection of the pesticide registration fees and the submission and processing requests for the fees to be waived.

PRIA authorizes EPA to process requests for waivers of registration application fees. The ICR covers the collection activities associated with requesting a fee waiver and involves requesters submitting a waiver request, information to demonstrate eligibility for the waiver, and certification of eligibility. Waivers are available for small businesses, for minor uses, and for actions solely associated with the Inter-Regional Project Number 4 (IR–4). State and Federal agencies are exempt from the payment of fees.

FIFRA requires EPA to collect annual pesticide product registration maintenance fees from pesticides registrants. Respondents complete and submit EPA Form 8570–30 indicating the respondent's liability for the registration maintenance fee. Annually the Agency provides registrants with a list of their products currently registered with the Agency. Registrants are provided the opportunity to review the list, determine its accuracy, and remit payment of maintenance fee. The list of products has space identified for making those products to be supported and those products that are to be cancelled. The registrants are also instructed to identify any products on the list which they believe to be transferred to another company, and to add to the list any products which the company believes to be registered that are not the Agency-provided list. The failure to pay the required fee for a product will result in cancellation of that product's registration.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 3.6 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Persons engaged in activities related to the registration of pesticide products are identified by NAICS codes 32532 (Pesticide and other Agricultural Chemical Manufacturing), 9641 (Regulation of Agricultural Marketing and Commodities), 32518 (Other Basic Inorganic Chemical Manufacturing), and 32519 (Other Basic Organic Chemical Manufacturing).

Estimated Number of Respondents: 2,013.

Frequency of Response: On occasion or annually, as applicable.

Estimated Total Annual Hour Burden: 7,262 hours.

Estimated Total Annual Cost: $465,635, that includes $2,930 in Operations and Maintenance costs.

Changes in the Estimates: This is a new ICR, so there are no changes from a previous version. However, this ICR combines two existing ICRs (OMB Control No. 2070–0167 and 2070–0100) with approved burden currently in the OMB Inventory. The burden currently identified in the OMB Inventory of Approved ICR Burdens for the Pesticide Product Maintenance Fee ICR is the same, and there is a decrease in burden for the Pesticide Registration Fee Waivers ICR. The decrease is based on the shift in the distribution of responses to least burdensome-type, resulting in the lower total estimated burden.

Dated: November 8, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–28662 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9226–9]

Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Hawaii's request to revise certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes

requirements to assure that electronic documents are as legally dependable as their paper counterparts. Under subpart D of CROMERR, state, tribe or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 16, 2010, the State of Hawaii Department of Health (HIDOH) submitted an application for its Net Discharge Monitoring Report (NetDMR) electronic document receiving system for revision/modification of its 40 CFR part 123—National Pollutant Discharge Elimination System (NPDES) State Program Requirements and Part 403—General Pretreatment Regulations For Existing And New Sources Of Pollution EPA-authorized programs for electronic reporting of Discharge Monitoring Report (DMR) information under 40 CFR 122.41(I)(4)(i) and 403.12(d)&(e)&(h).

EPA has reviewed HIDOH's request to revise its EPA-authorized programs and, based on this review, EPA has determined that the application meets the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Hawaii's request for revision to its 40 CFR part 123—NPDES State Program Requirements and part 403—General Pretreatment Regulations For Existing And New Sources Of Pollution authorized programs for electronic reporting of discharge monitoring report information is being published in the **Federal Register**.

HIDOH was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: November 8, 2010.

Andrew T. Battin,

Acting Director, Office of Information Collection.

[FR Doc. 2010–28651 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9224–9]

Notice of Request for Nominations to the Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill vacancies on the Environmental Financial Advisory Board. The Board seeks to maintain diverse representation across sectors and geographic locations. Nominees should demonstrate expertise/experience in any of the following areas: Environmental technology; sustainable development; real estate financing; private equity; venture capital; water and wastewater infrastructure financing; environmental law.

EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups. In addition to this notice, other sources may be utilized in the solicitation of nominees. The deadline for receiving nominations is Friday, December 10, 2010. Appointments will be made by the Deputy Administrator of the Environmental Protection Agency and will be announced in February 2011. Nominee's qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a résumé describing the professional and educational qualifications of the nominee as well as expertise/experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Address/Further Information Contact: Submit nomination materials by postal mail, electronic mail or fax to: Pamela Scott, Membership Coordinator, Environmental Financial Advisory Board, EPA, Office of the Chief Financial Officer, 1200 Pennsylvania Avenue, NW. (2731R), Washington, DC 20460; or e-mail *scott.pamela@epa.gov;* phone 202–564–6368; or fax 202–565–2587.

SUPPLEMENTARY INFORMATION: The Environmental Financial Advisory Board was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues:

- Reducing the cost of financing environmental facilities and discouraging polluting behavior;
- Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;
- Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- Identifying approaches specifically targeted to small/disadvantaged community financing;
- Increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws;
- Analyzing how new super technologies can be brought to market expeditiously;
- Increasing the total investment in environmental protection of public and private environmental resources to help ease the environmental financing challenge facing our nations.

The Board meets two times each calendar year (two days per meeting) at different locations within the continental United States. Board members typically contribute approximately 1–3 hours per month to the Board's work. The Board's membership services are voluntary and the Agency is unable to provide honoraria or compensation, according to FACA guidelines. However, Board members may receive travel and per diem allowances where appropriate and in accordance with Federal Travel Regulations for invitational travelers.

The following criteria will be used to evaluate nominees:

- Residence in the continental United States;
- Professional knowledge of, and experience with, environmental financing activities;
- Senior-level experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations;

- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies; and
- Willingness to serve a two-year term as an active-contributing member, with possible re-appointment to a second term.

Dated: November 4, 2010.

Joseph L. Dillon,

Director, Center for Environmental Finance, Office of the Chief Financial Officer.

[FR Doc. 2010–28664 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9225–3]

Public Water System Supervision Program Revision for the State of Colorado

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 Colorado 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 SDWA, and proposes to approve Colorado'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 15, 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 15, 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) US EPA, Region 8, Drinking Water Program, 1595 Wynkoop Street, Denver, CO 80202–1129, (2) Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, CO 80246–1530.

FOR FURTHER INFORMATION CONTACT: Breann Bockstahler at 303–312–6034.

SUPPLEMENTARY INFORMATION: EPA approved Colorado'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. CDPHE administers Colorado'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 Colorado?

Colorado 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 Colorado, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, 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: April 15, 2010.

Carol Rushin,

Deputy Regional Administrator, Region 8.

Editorial Note: This document was received in the Office of the Federal Register on November 8, 2010.

[FR Doc. 2010–28497 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9225–9; Docket ID No. EPA–HQ–ORD–2010–0927]

Workshop: Cumulative Mixtures Risk of Six Selected Phthalates in Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer Consultation Workshop on the Cumulative Mixtures Risk of Six Selected Phthalates; Request for Public Comments.

SUMMARY: EPA is announcing that ICF International, an EPA contractor for external scientific peer consultation, will convene a panel of independent experts and conduct an external peer consultation workshop to: (1) Review the recommendations for evaluation of the cumulative mixtures risk of phthalates as set forth in the National Academies of Science (NAS) report "Phthalates and Cumulative Risk Assessment: The Tasks Ahead" (2008); and (2) propose additional methods and

approaches, not already captured in the 2008 NAS report, that may facilitate the assessment of risk(s) associated with exposure to cumulative mixtures of the six selected phthalates.

ICF International invites all interested public parties to register to attend this workshop as observers. Space is limited, and reservations will be accepted on a first-come, first-served basis. In addition, ICF International invites the public to give brief oral comments at the conclusion of each workshop day. Furthermore, there is an opportunity to provide written comments regarding the subject matter under discussion; for more information please *see* below. In conceptualizing and preparing a draft of the "Toxicological Review of the Cumulative Mixtures Risk of Six Selected Phthalates," EPA will consider ICF's report of the comments and recommendations from individuals participating in the external peer consultation workshop and any written public comments that EPA receives in accordance with this notice.

DATES: The peer consultation workshop on the Cumulative Mixtures Risk of Six Selected Phthalates will be held on December 8 and 9, 2010, beginning at 8 a.m. and ending at 5 p.m. Eastern Standard Time. Please note that a public comment period begins November 15, 2010 and ends January 4, 2011. Technical comments should be in writing and must be received by the EPA by January 4, 2011.

ADDRESSES: The peer consultation workshop on the Cumulative Mixtures Risk of Six Selected Phthalates will be held at the Double Tree Crystal City, located at 300 Army Navy Drive in Arlington, VA. To attend the workshop, register no later than December 3, 2010, preferably via the workshop Web site page at *http://epa.phthalatesworkshop.icfi.com.* Alternatively, you may register by calling ICF International at 1–703–934–3173, sending a facsimile to 1–703–934–3470, or sending an e-mail to Ms. Ami Parekh Gordon at *AGordon3@icfi.com.*

Additional Information: EPA welcomes public attendance at the "Peer Consultation Workshop on Cumulative Mixtures Risk of Six Selected Phthalates" and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, or if you have any other questions related to this workshop please contact Ms. Ami Parekh Gordon of ICF International at *AGordon3@icfi.com* or by phone at 1–703–934–3173.

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 550 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

The IRIS cumulative assessment will address the specific recommendations presented in the NAS report on cumulative risk for phthalates and expand the discussion to other approaches that may also be applicable. The 2008 NAS report recommended that:

○ EPA group chemicals that cause common adverse outcomes and not focus exclusively on structural similarity or on similar mechanisms of action, and

○ Phthalates and other agents that cause androgen insufficiency or block androgen-receptor signaling, and are thus capable of inducing effects that characterize components of the phthalate syndrome, should be considered in a cumulative risk assessment.

In response to NAS recommendations, EPA is conducting research to: (1) Determine whether prenatal exposures to phthalates are associated with adverse effects in male and female offspring; (2) determine how phthalates interact in mixtures with other phthalates, toxic substances, and pesticides to induce adverse effects, in particular disruption of reproductive development in males and females; and (3) determine approaches to integrate new data on multiple phthalates into a cumulative mixtures assessment.

II. How To Submit Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0927, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0927. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: November 8, 2010.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–28665 Filed 11–12–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the following information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Comments must be submitted on or before January 14, 2011.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

Title: Real Estate Lending Standards.

OMB Number: 3064–0112.

Frequency of Response: On occasion.

Affected Public: Insured Financial Institutions Supervised by the FDIC.

Estimated Number of Respondents: 4,800.

Estimated Time per Response: 20 hours.

Total Annual Burden: 96,000 hours.

General Description of Collection: Institutions use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature and scope of operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

Request for Comment: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC this 9th day of November 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28626 Filed 11–12–10; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 8, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10307	First Vietnamese American Bank	Westminster	CA	11/05/2010.
10308	K Bank	Randallstown	MD	11/05/2010.
10309	Pierce Commercial Bank	Tacoma	WA	11/05/2010.
10310	Western Commercial Bank	Woodland Hills	CA	11/05/2010.

[FR Doc. 2010–28628 Filed 11–12–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following information collection:

Report title: Recordkeeping and Disclosure requirements associated with Regulation V.

Agency form number: Regulation V.

OMB control number: 7100–0308.

Frequency: On occasion.

Reporters: Financial institutions.[1]

Estimated annual reporting hours: 2,162,864 hours.

Estimated average time per response: Negative information notice, 15 minutes. Affiliate marketing opt-out notice, financial institutions, 18 hours; consumer response, 5 minutes. Red flags provision, 41 hours. Risk-based pricing notices and disclosures, one-time update, 40 hours; ongoing, 5 hours. Information furnished to consumer reporting agencies, policy & procedures, 40 hours; irrelevant dispute notices, 14 minutes.

Number of respondents: Negative information notice, 30,000 financial institutions. Affiliate marketing opt-out notice, 2,619 financial institutions; 638,380 consumer response. Red flags provision, 1,172 financial institutions. Risk-based pricing notice and disclosure, one-time update, 18,173 financial institutions; ongoing, 18,173 financial institutions. Information furnished to consumer reporting agencies, policy & procedures, 1,172 financial institutions; irrelevant dispute notices, 611,966.

General description of report: This information collection is authorized pursuant to the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681b, 1681c, 1681m, and 1681s–2 and 1681s–3). The obligation to comply with the notice and disclosure requirements of Regulation V is mandatory. Because the records are maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Abstract: Regulation V, which implements FCRA, as amended by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), contains several requirements that impose information collection requirements. Under the negative information notice provisions of the FACT Act, financial institutions that (1) extend credit and regularly in the ordinary course of business furnish information to a nationwide consumer reporting agency (CRA) and (2) furnish negative information to a CRA regarding credit extended to a customer must provide a clear and conspicuous notice to the customer, in writing, about furnishing this negative information. Regulation V contains model forms developed by the Federal Reserve that financial institutions may use to comply with this notice requirement. Under the affiliate marketing provisions of Regulation V, financial institutions are prohibited from using certain information received from an affiliate to make a solicitation to a consumer unless the consumer is given notice and a reasonable opportunity to opt out of such solicitations, and the consumer does not opt out. Under the Red Flags provisions of Regulation V, financial institutions are required to develop and implement a written identity theft prevention program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. In addition, credit and debit card issuers, under certain circumstances, are required to assess the validity of notifications of changes of address.

Current Actions: On September 2, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 53966) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on November 1, 2010. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, November 8, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–28568 Filed 11–12–10; 8:45 am]

BILLING CODE 6210–01–P

[1] Under section 217, the term "financial institution" is defined broadly to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLB Act), which defines financial institution to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956," whether or not affiliated with a bank. 15 U.S.C. 6809(3).

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 29, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kenneth L. Morrison,* Hastings, Nebraska; to acquire control of Doniphan Bancshares, Inc., and thereby indirectly acquire control of Bank of Doniphan, both of Doniphan, Nebraska.

Board of Governors of the Federal Reserve System, November 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28622 Filed 11–12–10; 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 9, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Caja de Ahorros de Valencia, Castellon Y Alicante,* Valencia, Spain (Bancaja); to become a bank holding company by acquiring control of Caja de Ahorros y Monte de Piedad de Madrid, and thereby indirectly acquire control of Caja Madrid Cibeles S.A., both of Madrid, Spain; CM Florida Holdings, Inc., Coral Gables, Florida; City National Bancshares, Inc., and City National Bank of Florida, both of Miami, Florida.

2. *New Bank,* Madrid, Spain; to become a bank holding company by acquiring control of Caja de Ahorros y Monte de Piedad de Madrid, and thereby indirectly acquire control of Caja Madrid Cibeles S.A., both of Madrid, Spain; CM Florida Holdings, Inc., Coral Gables, Florida; City National Bancshares, Inc., and City National Bank of Florida, both of Miami, Florida.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Chestnut Bancorp, Inc.,* Chestnut, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Chestnut, Chestnut, Illinois.

Board of Governors of the Federal Reserve System, November 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28621 Filed 11–12–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET Date	Trans No.	ET Req status	Party name
01–OCT–10	20101109	G	CA, Inc.
		G	Arcot Systems, Inc.
		G	Arcot Systems, Inc.
	20101137	G	Grupo Kuo S.A.B. de C.V.
		G	TSG4 L.P.
		G	Don Miguel Foods Corp.
	20101138	G	Hechos con Amor S.A. de C.V.
		G	TSG4 L.P.
		G	Don Miguel Foods Corp.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req status	Party name
	20101159	G	Trilantic Capital Partners IV L.P.
		G	Fortitech, Inc.
		G	Fortitech, Inc.
	20101160	G	United-Health Group Incorporated.
		G	A–Life Medical, Inc.
		G	A–Life Medical, Inc.
	20101161	G	Hewlett-Packard Company.
		G	ArcSight, Inc.
		G	ArcSight, Inc.
	20101167	G	Windy City Investments Holdings, L.L.C.
		G	U.S. Bancorp.
		G	FAF Advisors, Inc.
	20101168	G	Investor AB.
		G	Molnlycke AB.
		G	Molnlycke AB.
	20101169	G	Siemens Aktiengesellschaft.
		G	Republic ITS Holdings, LLC.
		G	Republic Intelligent Transportation Services, Inc.
	20101172	G	Grupo Nacional de Chocolates S.A.
		G	Charles Stephen Fehr.
		G	Fehr Holdings, LLC.
	20101176	G	Summit Partners Private Equity Fund VII–A, L.P.
		G	Great Hill Equity Partners II, L.P. Central Security Group Holdings, Inc.
	20101179	Y	The Charles Schwab Corporation.
		Y	Stephen J. Cucchiaro.
		Y	Windward Investment Management, Inc.
	20101183	G	Novacap Industries III, L.P.
		G	IPL Inc.
		G	IPL Inc.
04–OCT–10	20101171	G	GDF SUEZ S.A.
		G	International Power plc.
		G	International Power plc.
	20101177	G	Churchill Downs Incorporated.
		G	SWG Holdings, LLC.
		G	SW Gaming, LLC.
	20101184	G	Noble Group Limited.
		G	The Royal Bank of Scotland Group plc.
		G	Sempra Energy Solutions LLC.
	20101186	G	Noble Group Limited.
		G	Sempra Energy.
		G	Sempra Energy Solutions LLC.
05–OCT–10	20101174	G	Lindsay Goldberg III L.P.
		G	Philip J. Edmundson.
		G	William Gallagher Associates Insurance Brokers, Inc.
	20101188	G	Cortec Group Fund IV, L.P.
		G	Renovare Capital Partners, LP.
		G	Franklin Energy Services, LLC.
07–OCT–10	20100988	G	Forstmann Little & Co. Equity Partnership VII, L.P.
		G	Ben C. Sutton, Jr.
		G	ISP Sports, LLC.
12–OCT–10	20101153	G	Dayton-Cox Trust A.
		G	vAuto, Inc.
		G	vAuto, Inc.
	20101178	G	Alfa Laval AB.
		G	Munters AB.
		G	Munters AB.
	20101185	G	Warner Chilcott plc.
		G	Novartis AG.
		G	Novartis Pharma AG.
		G	Novartis Pharmaceuticals Corporation.
	20101192	G	Medtronic, Inc.
		G	Osteotech, Inc.
		G	Osteotech, Inc.
	20101193	G	Avista Capital Partners II, L.P.
		G	The Clorox Company.
		G	Armor All STP.
		G	STP Products Manufacturing Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req status	Party name
		G	Clorox Europe, Ltd.
	20101196	G	Stichting Gerdau Johannapeter.
		G	Ameron International Corporation.
		G	TAMCO Steel.
	20101198	G	Verizon Communications Inc.
		G	Cass Cellular Limited Partnership.
		G	Michigan RSA #9 Limited Partnership.
	20101199	G	Green Plains Renewable Energy, Inc.
		G	Investec plc.
		G	Global Ethanol, LLC.
		G	Global Ethanol Inc.
	20101201	G	Mr. LilzarKai, Richard.
		G	Chegg, Inc.
		G	Chegg, Inc.
	20101205	G	Kenneth D. Moelis.
		G	Daniel L. Nir.
		G	P&S Credit Management, L.P.
	20110003	G	Hellman & Friedman Capital Partners VI, L.P.
		G	Idealab.
		G	Internet Brands, Inc.
13–OCT–10	20101141	G	West Virginia United Health System, Inc.
		G	Camden-Clark Health Services, Inc.
		G	Camden-Clark Health Services, Inc.
	20101142	G	West Virginia United Health System, Inc.
		G	Signature Hospital Holdings, LLC.
		G	St. Joseph's Healthcare System LP.
	20101164	G	Li&Fung Limited.
		G	Integrated Distribution Services Group Limited.
		G	Integrated Distribution Services Group Limited.
	20101191	G	NRGEnergy, Inc.
		G	Green Mountain Energy Company.
		G	Green Mountain Energy Company.
	20101204	G	Plains Exploration & Production Company.
		G	McMoRan Exploration Co.
		G	McMoRan Exploration Co.
	20110001	G	The Johns Hopkins Health System Corporation.
		G	All Children's Health System, Inc.
		G	All Children's Health System, Inc.
	20110002	G	Siemens Aktiengesellschaft.
		G	Arthur D. Sharplin, Jr.
		G	Site Controls, LLC.
	20110005	G	Madison Dearborn Capital Partners VI–A, L.P.
		G	Fieldglass, Inc.
		G	Fieldglass, Inc.
	20110006	G	International Business Machines Corporation.
		G	Garnett & Helfrich Capital, L.P.
		G	Blade Network Technologies, Inc.
14–OCT–10	20101133	G	MedAssets, Inc.
		G	Broadlane Holdings, LLC.
		G	Broadlane Intermediate Holdings, Inc.
	2011010	G	ACE Limited.
		G	Rain and Hail Insurance Service, Inc.
		G	Rain and Hail Insurance Service, Inc.
	20110014	G	Francisco Partners II (Cayman), L.P.
		G	Technicolor S.A.
		G	Thomson 000.
		G	Grass Valley Spain SA.
		G	Brazil GV Newco.
		G	Thomson Licensing SAS.
		G	Grass Valley Germany GmbH.
		G	Grass Valley Australia PTY Limited.
		G	Grass Valley Singapore PTE Ltd.
		G	Canopus Asia Co. Limited.
		G	Grass Valley Canada, Inc.
		G	US GV Newco (to be formed).
		G	Grass Valley Nederland BV.
		G	Thomson Grass Valley France SA.
		G	Thomson Canopus Co. Limited.
		G	Thomson Italia Srl.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req status	Party name
15–OCT–10	20101064	G	Mark C. Simmons.
		G	Menu Food Income Fund.
		G	Menu Foods Limited.
18–OCT–10	20101175	G	International Business Machines Corporation.
		G	OpenPages, Inc.
		G	OpenPages, Inc.
	20101181	G	SoftLayer Holdings, Inc.
		G	The PlanetJE.I. Holdings, LLC.
		G	The Planet.com Internet Services, Inc.
19–OCT–10	20110008	G	Oprah Winfrey.
		G	Discovery Communications, Inc.
		G	Discovery Communications, Inc.
	20110016	G	Exelon Corporation.
		G	Deere & Company.
		G	John Deere Renewables, LLC.
	20110018	G	Sharp Corporation.
		G	Hudson Clean Energy Partners, L.P.
		G	Recurrent Energy, LLC.
	20110019	G	Permira IV Continuing LP2.
		G	Ian Quinn.
		G	Creganna Solutions Limited.
	20110020	G	Seadrill Limited.
		G	Allis-Chalmers Energy Inc.
		G	Allis-Chalmers Energy Inc.
	20110021	G	TA XI L.P.
		G	Dr. James and Cecelia Leiniger.
		G	MedSolutions, Inc.
	20110022	G	Elbit Systems Ltd.
		G	Mr. Ted B. Miller, Jr.
		G	M7 Aerospace LP.
	20110023	G	Earthlink, Inc.
		G	ITC-DeltaCom, Inc.
		G	ITC-DeltaCom, Inc.
	20110024	G	Onex Partners III LP.
		G	Res-Care, Inc.
		G	Res-Care, Inc.
	20110033	G	Greenbriar Equity Fund II, L.P.
		G	Dynamex Inc.
		G	Dynamex Inc.
21–OCT–10	20110026	G	AMETEK, Inc.
		G	Industrial Growth Partners UI, L.P.
		G	Atlas Material Holdings Corporation.
	20110027	G	Ebix, Inc.
		G	A.D.A.M., Inc.
		G	A.D.A.M., Inc.
	20110029	G	Gryphon Partners III, L.P.
		G	Andrew H. Stillman and Cassandra M. Stillman.
		G	American Importing Company, Inc.
		G	Broadway Properties Partnership.
	20110039	G	Huntsman Gay Capital Partners Fund, L.P.
		G	Citigroup Venture Capital International Growth Partnership LP.
		G	Receivable Management Services International, Inc.
	20110045	G	Lightyear Fund II, L.P.
		G	Southwest Insurance Partners, Inc.
		G	Southwest Insurance Partners, Inc.
22–OCT–10	20110042	G	Insight Venture Partners VI, L.P.
		G	Overdrive, Inc.
		G	Overdrive, Inc.
	20110044	G	Blackstone Capital Partners V L.P.
		G	MatlinPatterson Global Opportunities Partners L.P.
		G	Polymer Group, Inc.
	20110046	G	Sally W. Yelland.
		G	Lance, Inc.
		G	Lance, Inc.
	20110049	G	Enterprise Products Partners, L.P.
		G	Arlen B. Cenac, Jr.
		G	Cenac Offshore, L.L.C.
		G	Cenac Towing Co., L.L.C.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req status	Party name
		G	Channelview Fleeting Services, LLC.
		G	CTCO of Texas, LLC.
		G	CTCO Shipyard of Louisiana, LLC.
		G	CTCO Marine Services, LLC.
	20110052	G	TPG V Hamlet AIV, L.P.
		G	Hamlet Holdings LLC.
		G	Harrah's Entertainment, Inc.
	20110054	G	TPG Hamlet Holdings B, LLC.
		G	Hamlet Holdings LLC.
		G	Harrah's Entertainment, Inc.
	20110058	G	Apollo Hamlet Holdings, LLC.
		G	Hamlet Holdings LLC.
		G	Harrahs Entertainment, Inc.
	20110059	G	Co-Invest Hamlet Holdings B, LLC.
		G	Hamlet Holdings LLC.
		G	Harrah's Entertainment, Inc.
	20110060	G	Apollo Investment Fund VI, L.P.
		G	Hamlet Holdings LLC.
		G	Harrahs Entertainment, Inc.
	20110061	G	Co-Invest Hamlet Holdings, Series LLC.
		G	Hamlet Holdings LLC.
		G	Harrah's Entertainment, Inc.
	20110066	G	MetroPCS Communications, Inc.
		G	Youghigheny Communications—Northeast Holdings, Inc.
		G	Youghigheny Communications—Northeast, LLC.
		G	Youghigheny Communications—Northeast Spectrum, LLC.
	20110070	G	Harbour Group Investments V, L.P.
		G	2003 Riverside Capital Appreciation Fund, L.P.
		G	Hardware Resources Holding Company, Inc.
	20110072	G	PBF Energy Company.
		G	Valero Energy Corporation.
		G	Valero Refining and Marketing Company.
		G	Valero Refining Company—New Jersey.
		G	Valero Natural Gas Pipeline Company.
		G	Valero Marketing and Supply Company.
25–OCT–10	20110030	G	EnCap Energy Infrastructure Fund, L.P.
		G	Antero Resources, LLC.
		G	Centrahoma Processing LLC.
		G	Antero Resources Midstream Corporation.
		G	Antero Resources, LLC.
26–OCT–10	20110034	G	Raytheon Company.
		G	Trusted Computer Solutions, Inc.
		G	Trusted Computer Solutions, Inc.
	20110073	G	Moelis Capital Partners Opportunity Fund I, LP.
		G	Holdco.
		G	Holdco.
	20110074	G	NC VII Limited.
		G	MuntersAB.
		G	MuntersAB.
27–OCT–10	20110065	G	American Securities Partners V, L.P.
		G	AZ Chem Investments Partners LP.
		G	US HoldCo.
28–OCT–10	20110017	G	Francisco Partners II, L.P.
		G	Quantros, Inc.
		G	Quantros, Inc.
	20110071	G	Broadcom Corporation.
		G	Beceem Communications.
		G	Beceem Communications.
29–OCT–10	20110082	G	Harvest Partners V, L.P.
		G	Bartlett Holdings, Inc.
		G	Bartlett Holdings, Inc.
	20110084	G	American Securities Partners V, L.P.
		G	Friedman Fleischer & Lowe Capital Partners, L.P.
		G	Kool Smiles Holding Corp.
	20110086	G	CSG Systems International, Inc.
		G	Intec Telecom Systems plc.
		G	Intec Telecom Systems plc.
	20110097	G	United Technologies Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans No.	ET Req status	Party name
	20110098	G	Clipper Windpower Plc.
		G	Clipper Windpower Plc.
		G	Northern Tier Investors LLC.
		G	Marathon Oil Corporation.
		G	Northern Tier Holdings LLC.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–28369 Filed 11–12–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: National Suicide Prevention Lifeline—Crisis Center Survey—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services funds a National Suicide Prevention Lifeline Network, a system of toll-free telephone numbers that routes calls from anywhere in the United States to a network of more than 147 certified crisis centers that can link callers to local emergency, mental health, and social service resources. The technology permits calls to be directed immediately to a suicide prevention worker who is geographically closest to the caller.

Through its grantee which is administering the National Suicide Prevention Lifeline Network, SAMHSA developed a Crisis Center Survey in an effort to learn more about the capacities, skills, and unmet needs of the crisis centers involved in the Network. The completed Surveys will inform the Network's planning around technological capacity, network recruitment strategies, training, marketing, and other network resource development activities. The goal of this effort is to ensure that the telephonic routing system remains accurate, enhance quality services provided by networked crisis centers, increase service accessibility to people at risk for suicidal behavior, and optimize public health efforts to prevent suicide and suicidal behavior.

All 147 networked crisis centers will complete the Web-based Crisis Center Survey annually. The Survey requests information about organizational structure, staffing, scope of services, call center operations, quality assurance, community outreach/marketing, telephone equipment, data collection, and technical assistance needs.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/respondent	Total number of responses	Burden/response (hours)	Annual burden (hours)
National Suicide Prevention Lifeline: Crisis Center Survey	147	1	147	2	294

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by January 14, 2011.

Dated: November 5, 2010.

Elaine Parry,

Director, Office of Management, Technology, and Operations.

[FR Doc. 2010–28668 Filed 11–12–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: 2011 National Survey on Drug Use and Health (OMB No. 0930–0110)—Revision

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The survey is used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The survey is also used to collect information on mental health problems and the utilization of substance abuse and mental health services. The results are used by SAMHSA, ONDCP, Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

The 2011 NSDUH will continue conducting a follow-up clinical interview with a subsample of approximately 1,500 respondents. The design of this study is based on the recommendations from a panel of expert consultants convened by SAMHSA's Center for Mental Health Services (CMHS), to discuss mental health surveillance data collection strategies. The goal is to create a statistically sound measure that may be used to estimate the prevalence of Serious Mental Illness (SMI) among adults (age 18+).

For the 2011 NSDUH, no questionnaire changes are proposed.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2011 will be sufficient to permit prevalence estimates for each of the 50 States and the District of Columbia.

Because the NSDUH collects data on substance use, mental health and the utilization of substance abuse and mental health services, it is an appropriate and convenient vehicle to measure the impact of the Deepwater Horizon oil spill on residents of that region. Therefore, SAMHSA is planning to expand the NSDUH by oversampling the geographic region impacted by the oil spill. The current NSDUH sample design will be implemented and an oversampling method that results in an additional 2,000 completed interviews in the gulf coast region will be employed. The additional interviews will be concentrated in the coastal counties of Alabama, Florida, Louisiana, and Mississippi. All survey instruments and protocols will be identical for this additional sample. The total number of respondents for the 2011 NSDUH will be 69,500, or 2,000 cases more than the planned sample size for 2010.

Though there will be some increase in the sample for all four States involved in the Deepwater Horizon event (Alabama, Florida, Louisiana, and Mississippi), specific counties in the gulf coast region were chosen for focused over sampling. These counties were chosen based on the following criteria:

- Claims activity to BP for economic and related health needs;
- County involvement with Department of Education and Administration for Children and Families programming; and
- State assessment of impacted counties based on consultation with SAMHSA during the preparation of aid applications.

COUNTIES DESIGNATED AS THE MOST AFFECTED AREAS

State name	County/Parish name
Alabama	Baldwin, Clarke, Escambia, Mobile, Monroe, and Washington.
Florida	Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton.
Louisiana	Iberia, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, St. Bernard, St. Martin, St. Mary, St. Tammany, Terrebonne, and Vermilion.
Mississippi	George, Hancock, Harrison, Jackson, Pearl River, and Stone.

The total annual burden estimate is shown below:

Instrument	No. of respondents	Responses per respondent	Hours per response	Total burden hours	Hourly wage rate	Annualized hourly costs
Household Screening	196,720	1	0.083	16,328	$14.64	$239,042
Interview	69,500	1	1.000	69,500	14.64	1,017,480
Clinical Follow-up Certification	90	1	1.000	90	14.64	1,318
Clinical Follow-up Interview	1,500	1	1.000	1,500	14.64	21,960
Screening Verification	5,560	1	0.067	373	14.64	5,461
Interview Verification	10,425	1	0.067	698	14.64	10,219
TOTAL	196,810			88,489		$1,295,480

Written comments and recommendations concerning the proposed information collection should be sent by December 15, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: November 8, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–28670 Filed 11–12–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the

Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Emergency Response Grants Regulations—42 CFR Part 51—(OMB No. 0930–0229)—Extension

This rule implements section 501(m) of the Public Health Service Act (42 U.S.C. 290aa), which authorizes the Secretary to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. The rule establishes criteria for determining that a substance abuse or mental health emergency exists, the minimum content for an application, and reporting requirements for recipients of such funding. SAMHSA will use the information in the applications to make a determination that the requisite need exists; that the mental health and/or substance abuse needs are a direct result of the precipitating event; that no other local, state, tribal or Federal funding sources are available to address the need; that there is an adequate plan of services; that the applicant has appropriate organizational capability; and, that the budget provides sufficient justification and is consistent with the documentation of need and the plan of services. Eligible applicants may apply to the Secretary for either of two types of substance abuse and mental health emergency response grants: Immediate awards and Intermediate awards. The former are designed to be funded up to $50,000, or such greater amount as determined by the Secretary on a case-by-case basis, and are to be used over the initial 90-day period commencing as soon as possible after the precipitating event; the latter awards require more documentation, including a needs assessment, other data and related budgetary detail. The Intermediate awards have no predefined budget limit. Typically, Intermediate awards would be used to meet systemic mental health and/or substance abuse needs during the recovery period following the Immediate award period. Such awards may be used for up to one year, with a possible second year supplement based on submission of additional required information and data. This program is an approved user of the PHS–5161 application form, approved by OMB under control number 0920–0428. The quarterly financial status reports in 51d.10(a)(2) and (b)(2) are as permitted by 45 CFR 92.41(b); the final program report, financial status report and final voucher in 51d.10(a)(3) and in 51d.10(b)(3–4) are in accordance with 45 CFR 92.50(b). Information collection requirements of 45 CFR part 92 are approved by OMB under control number 0990–0169. The following table presents annual burden estimates for the information collection requirements of this regulation.

42 CFR citation	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Immediate award application:				
51d.4(a) and 51d.6(a)(2)	3	1	3	*9
51d.4(b) and 51d.6(a)(2) Immediate Awards	3	1	10	*30
51d.10(a)(1)—Immediate awards—mid-program report if applicable	3	1	2	*6
Final report content for both types of awards:				
51d.10(c)	6	1	3	18
Total	6			18

*This burden is carried under OMB No. 0920–0428.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: November 5, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–28669 Filed 11–12–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day 11–0636]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Centers for Disease Control and Prevention (CDC) Secure Communications Network (Epi–X) (OMB No. 0929–0636 exp. 12/31/2010 formerly State-Based Evaluation of the Alert Notification Component of CDC's Secure Communication Network (Epi–X))—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The classification of this Information Collection (IC) is a revision of the State-Based Evaluation of the Alert Notification Component of CDC's

Secure Communication Network (Epi–X) OMB Control No. 0920–0636. During this revision, we are requesting the title be revised to read—Centers for Disease Control and Prevention (CDC) Secure Communications Network (Epi–X).

This IC is also being revised to improve the effectiveness of CDC communications with its public health partners during public health incident responses. Improvements include the addition of new data collection instruments related to six specific public health incidents. The addition of these instruments and the associated increase in burden hours is required to ensure that CDC and other Federal agencies will have secure, timely, and accurate information from our public health partners. This information is required by CDC during a public health incident for decision making and for effective and efficient execution of CDC's response activities. Public health partners include public health officials and agencies at the state and local level.

From 2005–2009, CDC conducted incident specific, public health emergency response operations on average of four public health incidents a year with an average emergency response length of 48 days for each incident. The effectiveness and efficiency of CDC's response to any public health incident depends on information at the agency's disposal to characterize and monitor the incident, make timely decisions, and take appropriate actions to prevent or reduce the impact of the incident.

Available information during many public health incident responses is often incomplete, is not easily validated by state and local health authorities, and is sometimes conflicting. This lack of reliable information often creates a high level of uncertainty with potential negative impacts on public health response operations.

Secure communications with CDC's state and local public health partners is essential to de-conflict information, validate incident status, and establish and maintain accurate situation awareness. Reliable, secure communications are essential for the agency to, make informed decisions, and to respond in the most appropriate manner possible in order to minimize the impact of an incident on the public health of the United States.

Epi–X is CDC's Web-based communication system for securely communicating during public health emergencies that have multi-jurisdictional impact and implications. *Epi–X* was specifically designed to provide public health decision-makers at the state and local levels a secure, reliable tool for communicating information about sensitive, unusual, or urgent public health incidents to neighboring jurisdictions as well as to CDC. The system was also designed to generate a request for epidemiologic assistance (Epi–Aid) from CDC using a secure, paperless environment.

Epi–X designers have developed functionalities that permit targeting of critical outbreak information to specific public health authorities who can act quickly to prevent the spread of diseases and other emergencies in multi-jurisdictional settings, such as those that could occur during an influenza pandemic, infection of food and water resources, and natural disasters.

CDC has recognized a need to expand the use of *Epi–X* to collect specific response related information during public health emergencies. Authorized Officials from state and local health departments impacted by the public health incident will be surveyed only by *Epi–X.* Respondents will be informed of this data collection first through an *Epi–X* Facilitator, who will work closely with *Epi–X* program staff to ensure that *Epi–X* incident specific IC is understood. The survey instruments will contain specific questions relevant to the current and ongoing public health incident and response activities.

The Web-based tool for data collection under *Epi–X* already is established for the current IC and has been in use since 2003. CDC will adapt it as needed to accommodate the data collection instruments. Respondents will receive the survey instrument as an official CDC e-mail, which is clearly labeled, "*Epi–X* Emergency Public Health Incident Information Request." The e-mail message will be accompanied by a link to an *Epi–X Forum* discussion web page. Respondents can provide their answers to the survey questions by posting information within the discussion.

There are no costs to respondents except their time. The total estimated annual burden hours are 24,400.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
State epidemiologists	50	104	1
City and county health officials	1600	12	1

Dated: November 4, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–28577 Filed 11–12–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Development of the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 14, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz,

Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Development of the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting

Improving the quality and safety of health care in the United States is one of the most significant challenges facing the American health care system. Too many Americans continue to receive health care that is not grounded in a reliable evidence base of what is proven appropriate, safe, and effective. Extensive studies conducted during recent decades demonstrate that the U.S. health care system provides continuing unwarranted variation and costly, inefficient, and simply unsafe care. Involving patients and families in improving quality and safety in hospitals has the potential to improve health care experiences, delivery, and outcomes. AHRQ has been at the forefront of supporting increased involvement for patients, families, and the public in all aspects of health care.

This project will develop a program to help patients, families, and health professionals in the hospital support one another to improve quality and safety. To accomplish these goals, patients and families must be able to express what they want from their hospital care and how they want to be involved and then effectively communicate this information with health professionals. Conversely, health professionals must be able to understand what patients want to do and what is appropriate for them to do and feel that they have the system supports and tools to facilitate these actions.

To address this issue and help fulfill AHRQ's mission of health care quality improvement, AHRQ will develop a set of interventions and materials, entitled the Guide to Patient and Family Engagement in Health Care Quality and Safety in the Hospital Setting ("the Guide"), for use by patients, their family members, health care professionals, and hospital leaders to foster patient and family engagement around the issues of hospital safety and quality.

The goals of this project are to:

(1) Identify the barriers and facilitators to implementing the Guide, including how barriers were overcome;

(2) Assess staff satisfaction with the Guide and change in staff behavior before and after implementation of the Guide including organizational culture with respect to patient- and family engagement and patient- and family-centered care;

(3) Assess patient satisfaction with the Guide and change in patient experience of care before and after implementation of the Guide including patient/family involvement in their own health care and patient/family involvement in quality improvement and patient safety activities; and

(4) Refine the Guide as necessary to improve implementation and effectiveness.

The Guide will be tested in three hospitals which will vary in terms of size, location, teaching status, and ownership.

This study is being conducted by AHRQ through its contractor, the American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, including the development and assessment of methods for enhancing patient participation in their own care and for facilitating shared patient-physician decision-making. 42 U.S.C. 299(b)(1)(A).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Semi-structured interviews will be conducted in-person with hospital staff and hospital leaders from each of the participating health care facilities. Both pre- and postimplementation interviews will be conducted and separate interview guides will be used for staff and leaders. Pre-implementation, the interviews will focus on current knowledge, attitudes and beliefs around patient and family engagement and on the current organizational culture and climate surrounding patient and family engagement. Post-implementation, interviews will be conducted to understand the hospital's experiences implementing the Guide interventions, including how easy or difficult the Guide was to implement; the perceived effects of the Guide implementation; and the sustainability of the Guide interventions.

(2) Collection of documentation from each participating facility. The purpose of this collection of documentation is to gather documentation of the implementation of the Guide and to document policies and procedures related to patient and family engagement through a review of records and other materials. To the extent that it is available, the following types of documentation will be collected:

- Background on organizational structure and vision.
- Policies and procedures related to Component 1 and Component 2 strategies of the Guide.
- Tools used to foster communication between patients, family members and health care team.
- Policies and procedures related to patient and family engagement, patient- and family-centered care, quality and safety.

This task will consist of forwarding emails and or photocopying and sending documents to the project team both pre- and post-implementation.

(3) Bi-weekly semi-structured interviews will be conducted by telephone with the implementation coordinators from each participating facility. At each hospital site, an implementation coordinator will be responsible for overseeing implementation activities and serving as a primary point-of-contact. Interviews with these individuals will provide a complete understanding of the Guide implementation and the ability to track the implementation in real time. These interviews will occur bi-weekly for 9 months.

(4) Observation of Guide implementation around different activities targeted in the Guide components. The purpose of these observations is to directly assess how the Guide is being implemented and to determine which follow up questions from the semi-structured interview protocol should be prioritized or removed during the in-person semi-structured interviews. As such, observations will occur post-implementation only. Observations will be conducted by the project staff so this data collection does not impose a burden on the participating hospitals; therefore it is not included in Exhibit 1.

(5) Focus groups with patients and family members at each of the participating sites. The purpose of these groups is to elicit information about patients' and families' experiences of care at the hospital along with their reactions to tools in the Guide and their implementation. Three focus groups of up to 8 individuals will be conducted at each hospital post implementation. One

focus group will be conducted with patients only, one with family members only and one with patients and family members together.

(6) Staff Survey with hospital staff. The purpose of the pre- and post-implementation Staff Survey is to assess changes in organizational culture related to patient safety and engagement, and to assess significant changes in staff knowledge, attitudes, and behaviors. Items from the Medical College of Georgia (MCG) Patient- and Family-Centered Care Culture Survey will be used in this data collection activity. The survey items will be supplemented with questions from AHRQ's Hospital Survey on Patient Safety Culture (HSOPS) and from the Army Medical Department Climate Survey. At each of the three hospital sites, it is estimated that survey responses will be collected from at least 50 health professionals. The same questionnaire will be used at pre- and post-implementation.

(7) Patient Survey. The patient survey which will be administered pre-implementation and again at post-implementation will be built around the CAHPS® Hospital Survey (HCAHPS) domains that assess aspects of patient-physician interaction around the hospital stay, including Communication with Nurses, Communication with Doctors, Communication about Medicines, Responsiveness of Hospital Staff, and Discharge Information. These scales directly assess the aspects of the hospital stay and encounters that we are hoping the Guide will affect. Additional questions to address any aspects of care covered by the Guide that are not adequately addressed by the HCAHPS composites will also be included in this survey. Additionally, measures from the Patient Activation Measures (PAM) Survey will also be included. The same questionnaire will be used pre- and post-implementation.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondents' time to participate in this project. Semi-structured interviews will be conducted with about 4 hospital staff members both pre- and post-implementation and requires one hour to complete. Semi-structured interviews will also be conducted with 2 hospital leaders, pre- and post-implementation, and will take one hour to complete. Collection of documentation will occur twice at each hospital and requires 4 hours to complete. Bi-weekly semi-structured interviews will be conducted with the implementation coordinator at each hospital. A total of 18 interviews per hospital over a 9 month period will occur with each interview taking about 30 minutes. Focus groups will take place separately with patients, their families, and both patients and their families and will last for about an hour and a half. The staff survey will be completed by approximately SO hospital staff members from each hospital, pre- and post-implementation, and requires 15 minutes to complete. The patient survey will be conducted twice, pre- and post-implementation, by about 884 patients across all 3 participating hospitals and will take 30 minutes to complete. The total annualized burden hours are estimated to be 1,190 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The total cost burden is estimated to be $27,316.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Semi-structured leader interviews—pre-implementation	3	4	1	12
Semi-structured leader interviews—post-implementation	3	4	1	12
Semi-structured staff interviews—pre-implementation	3	8	1	24
Semi-structured staff interviews—pre-implementation	3	8	1	24
Collection of documentation	3	2	4	24
Bi-weekly semi-structured interviews	3	18	30/60	27
Focus group with patients	24	1	90/60	36
Focus group with patients' family	24	1	90/60	36
Focus group with patients & family	24	1	90/60	36
Staff survey	3	100	15/60	75
Patient survey	884	2	30/60	884
Total	977	na	na	1,190

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Semi-structured leader interviews—pre-implementation	3	12	$43.74	$525
Semi-structured leader interviews—post-implementation	3	12	43.74	525
Semi-structured staff interviews—pre-implementation	3	24	33.51	804
Semi-structured staff interviews—post-implementation	3	24	33.51	804
Collection of documentation	3	24	21.16	508
Bi-weekly semi-structured interviews	3	27	33.51	905
Focus group with patients	24	36	20.90	752
Focus group with patients' family	24	36	20.90	752
Focus group with patients & family	24	36	20.90	752
Staff survey	3	75	33.51	2,513
Patient survey—pre-implementation	884	884	20.90	18,476

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Total	977	1,190	n/a	27,316

* Based upon the mean of the wages for 11–9111 Medical & Health Services Manager ($43.74), 29–000 Healthcare Practitioner and Technical Occupations ($33.51), 43–6011 Executive Secretaries and Administrative Assistants ($21.16) and 00–0000 All Occupations ($20.90), May 2009 National Occupational Employment and Wage Estimates. United States, "U.S. Department of Labor, Bureau of Labor Statistics." *http://www.bls.gov/oes/current/oes_nat.htm#b29–0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 below breaks down the costs related to this study. Since this study will span two years, the costs have been annualized over a two year period. The total annualized cost is estimated to be $536,396.50.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Guide Development	$526,214	$263,107
Data Collection Activities	310,006	155,003
Data Processing and Analysis	110,620	55,310
Project Management	20,270	10,135
Overhead	105,683	52,842
Total	1,072,793	536,396.50

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 1, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–28368 Filed 11–12–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Standardizing Antibiotic Use in Long-term Care Settings." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 14, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Standardizing Antibiotic Use in Long-term Care Settings

This project seeks to contribute to AHRQ's mission by optimizing antibiotic prescribing practices in nursing homes. Nursing homes serve as one of our most fertile breeding grounds for antibiotic-resistant strains of bacteria. Nursing home residents, with their combination of the effects of normal aging and multiple chronic diseases, have relatively high rates of infection. With high rates of respiratory, urinary, skin, and other infection comes a very high rate of antibiotic use that gives rise to Methicillin-resistant Staphylococcus aureus (MRSA), Vancomycin-resistant Enterococci (VRE), fluoroquinolone-resistant strains of a variety of bacteria, and multi-drug resistant organisms (MDROs). Inappropriate antibiotic prescribing practices by primary care clinicians caring for residents in long-term care (LTC) communities is becoming a major public health concern. Antibiotics are among the most commonly prescribed pharmaceuticals in LTC settings, yet reports indicate that a high proportion of antibiotic prescriptions are inappropriate.

In an effort to reduce antibiotic overprescribing, Loeb and colleagues

developed minimum criteria for the initiation of antibiotics in LTC setting. The criteria have been tested in several studies, but their implementation and tests of validity have been limited. In particular, though Loeb and colleagues developed distinct minimum criteria for several types of infection (skin and soft-tissue, respiratory, urinary tract, and unexplained fever), a rigorous evaluation has been conducted only for urinary tract infections.

This project will assess an approach to using the Loeb criteria that requires minimal changes in facility procedures and, therefore, is likely to be widely adopted by nursing homes. The intervention makes use of a Communication and Order Form (COF), which has been designed by the researchers and will be used by the nurses and physicians to guide their decisionmaking about whether to order an antibiotic for a specific resident experiencing a specific infection. Twelve nursing homes will participate in this project with eight assigned to the intervention and four serving as controls. The eight intervention sites will be divided into two groups of four sites each, with one group receiving an additional follow-up training 2 months after the intervention.

The objectives of the study are to:

1. Implement a quality improvement (01) intervention program to optimize antibiotic prescribing practices;

2. Evaluate the effect of the 01 intervention on antibiotic prescribing practices including validation of the Loeb minimum criteria; and

3. Develop and execute a dissemination plan to ensure wide dissemination of the findings and recommendations for improving antibiotic prescribing behaviors in LTC settings.

This study is being conducted by AHRQ through its contractor, the American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a (a) (1) and (2).

Method of Collection

The following data collection activities and trainings will be implemented to achieve the first two objectives of this project:

1. Loeb criteria communication and Order Form—This form will be completed by staff in the eight intervention nursing homes to determine if the Loeb criteria have been met. The COF provides a logical decision model for determining the need for an antibiotic. Facility staff will complete the paper form and the data from the forms will be entered into a database by the project researchers. Based on a preliminary review of the infection logs at 4 nursing homes, we estimate that staff nurses will complete an average of 17 COFs per month per nursing home at the 8 nursing homes that will use the COF during the 6-month intervention period.

2. Medical record reviews (MMR)—To be conducted by research staff to collect outcome data to determine antibiotic prescribing practices and their effects and to assess the resident's health and functional status, which are potentially important control variables. Outcome and control variables will be obtained by monthly chart review and review of the Nursing Home Minimum Data Set (MDS) for a period of nine months: three months preceding the initiation of the 01 intervention (for which the charts of all eligible residents will be abstracted for a 3-month period at one time), and every other month during a 6-month period following the inception of the intervention (for which the charts of all eligible residents will be abstracted for the preceding two months. AHRQ's contractor will conduct the data abstraction at all 12 facilities (treatment and control). Since this data collection will not impose a burden on the facility staff, OMB clearance is not required.

3. Staff training—Prior to implementation, the staff (administrators, nurses, and physicians) at all eight intervention sites will be trained in the proper use of the Loeb Criteria COF. Staff at four of the intervention sites will be trained a second time 2 months after the initial training. We estimate that an average of 24 nurses and 2 physicians will be trained at each nursing home.

4. Pre-implementation semi-structured interview—The purpose of this interview is to gain an understanding of: (1) How the staff and the department(s) and/or wider facility perceive quality improvement, in general; (2) the amount of experience the site has in QI and its processes for handling infections; (3) why the facility decided to adopt the Loeb Criteria COF; and (4) the facility's goals for the Loeb Criteria COF implementation. Four staff members will be interviewed at each nursing home: two champions (likely the administrator, director of nursing, and/or the assistant director of nursing), one line nurse, and one staff physician. Questions vary by respondent type.

5. Post-training semi-structured interview—The purpose of this interview is to measure the staff's: (1) Perceived adequacy of the training; (2) their reactions to the training; and (3) their plans for implementation. The same four persons at each nursing home who were interviewed for the pre-implementation semi-structured interviews will participate in this interview. Questions vary by respondent type.

6. Post-implementation semi-structured interview—The purpose of this interview is to identify: (1) Facilitators and barriers to implementation; (2) how barriers were overcome; (3) what barriers remain; (4) perceived impacts of the Loeb Criteria COF on the use of antibiotics within the facility; and (5) the facility's view on the business case for Loeb Criteria COF. The same four persons at each nursing home who participated in the previous semi-structured interviews will participate in this interview. Questions do not vary by respondent type.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the nursing homes' time to participate in this project. All of the data collections and training in Exhibit 1 pertain only to the eight intervention nursing homes. The Loeb Criteria COF will be completed approximately 17 times a month for 6 months (102 total) by staff at each nursing home and will require about 5 minutes to complete. Staff training will be attended by all nursing and medical staff members at each nursing home (an average of 24 nurses and two physicians per facility) and will last 1 hour. All eight intervention facilities will receive training once at the start of the intervention and four of the eight facilities will receive a second training one month later to see if reinforcement results in improved performance. The pre-implementation, post training and post-implementation semi-structured interviews will be completed by the same four staff members at each nursing home consisting of two champions (likely the administrator, director of nursing, and/or the assistant director of nursing), one line nurse, and one staff physician. Each interview will be scheduled for 1 hour. The total annual burden is estimated to be 476 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this project. The total annual cost burden is estimated to be $17,508.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of nursing homes	Number of responses per nursing home	Hours per response	Total burden hours
Loeb Criteria COF Staff training	8	102	5/60	68
Initial Training	8	26	1	208
Re-training	4	26	1	104
Pre-implementation semi-structured interview	8	4	1	32
Post training semi-structured interview	8	4	1	32
Post-implementation semi-structured interview	8	4	1	32
Total	44	na	na	476

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of nursing homes	Total burden hours	Average hourly wage rate*	Total burden
Loeb Criteria COF Staff training	8	68	$33	$2,244
Initial Training	8	208	36	7,488
Re-training	8	104	36	3,744
Pre-implementation semi-structured interview	8	32	42	1,344
Post training semi-structured interview	8	32	42	1,344
Post-implementation semi-structured interview	8	32	42	1,344
Total	44	476	na	17,508

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2009, "U.S. Department of Labor, Bureau of Labor Statistics." $33 is the average wage for nurses who will complete the COF. $36 is the weighted average wage of 24 nurses at $33 per hour and 2 physicians at $70 per hour who will be trained. $42 is the weighted average wage of 3 nurses and administrators at $33 per hour and 1 physician at $70 per hour who will be interviewed.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annual cost to the government for funding this project. Although data collection will require less than one year, the entire project will span 2 years. The total cost of this research is estimated to be $999,554.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$103,498	$51,749
Data Collection Activities	361,178	180,589
Data Processing and Analysis	193,830	96,915
Publication of Results	48,497	24,249
Project Management	65,334	32,667
Overhead	227,217	113,609
Total	$999,554	$499,777

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 4, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–28367 Filed 11–12–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Revision to Proposed Collection; Comment Request; the National Children's Study, Vanguard (Pilot) Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The National Children's Study, Vanguard (pilot) Study.

Type of Information Collection Request: Revision.

Need and Use of Information Collection:

The purpose of the proposed data collection is to continue the Vanguard phase of the National Children's Study (NCS), to evaluate the feasibility, acceptability, and cost of recruitment strategies and study design elements for a prospective, national longitudinal study of child health and development. In combination, the substudies encompassed by the Vanguard phase will be used to inform the design of the Main Study of the National Children's Study.

Background

The National Children's Study is a prospective, national longitudinal study of the interaction between environment, genetics, and biological factors on child health and development. The Study defines "environment" broadly, taking a number of natural and man-made environmental, biological, genetic, and psychosocial factors into account. By studying children through their different phases of growth and development, researchers will be better able to understand the role these factors have on health and disease. Findings from the Study will be made available as the research progresses, making potential benefits known to the public as soon as possible. The National Children's Study is led by a consortium of federal partners: the U.S. Department of Health and Human Services (including the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Institute of Environmental Health Sciences of the National Institutes of Health and the Centers for Disease Control and Prevention), and the U.S. Environmental Protection Agency.

To conduct the detailed preparation needed for a study of this size and complexity, the NCS includes a preliminary pilot study known as the Vanguard Study. The purpose of the Vanguard Study is to assess the feasibility, acceptability, and cost of the recruitment strategies, study logistics, and study visit measures that are to be used in the design of the NCS Main Study. The Vanguard Study begins prior to the NCS Main Study and will run in parallel with the Main Study. At every phase of the NCS, the multiple methodological studies conducted during the Vanguard phase will inform the implementation and analysis plan for the Main Study.

The Vanguard Study is conducted through study locations across the United States. Seven of these locations began recruitment in the winter and spring of 2009, and an additional 30 locations will begin recruiting in late 2010. These 30 sites were added to the Vanguard Study to evaluate the feasibility, acceptability and cost of three separate recruitment strategies for enrollment of pregnant women into the NCS; additional study locations were established to yield greater precision in statistical analyses. The original seven sites used a household enumeration and screening strategy to identify eligible women for recruitment into the study. The 30 sites that entered the study in 2010 are recruiting pregnant women as participants using three methods: (a) A provider-based recruitment method, where women are recruited via their health care providers; (b) an enhanced household enumeration method; and (c) a two-tiered recruitment procedure where women are offered participation in a lower-intensity data collection and then may be able to convert to a higher-intensity data collection. These sites have been collecting data relating to the pre-pregnancy, pregnancy, and birth periods. The original seven Vanguard sites have been collecting data relating to the pre-pregnancy, pregnancy, and birth periods, as well as postnatal data collection points at 3-, 6-, 9- and 12-months of age.

Methods

We propose to continue data collection during this phase of the Vanguard Study among the 37 study locations up to and including the visit planned to take place when the sample children have reached 24 months of age. This would align study visits approved for the initial 7 Vanguard Study locations (which extend past the birth visit to include a 3-, 6-, 9-, 12-, 18- and 24-month visit) with the study visits approved for the 30 additional Vanguard Study locations (which were initially proposed and approved up to and including the birth visit). Extending the data collection of the 30 additional Vanguard Study locations to 24 months of age would support rigorous, empirical evaluation of participant retention as it may relate to recruitment strategy. A strong understanding of how to encourage retention of study participants, particularly during the infancy and early childhood years, will be essential to planning the Main Study. Additionally, continuing data collection post-birth among the alternate recruitment strategy study locations allows us to generate additional data to inform the development of study visit procedures, both for future Vanguard study efforts and the Main Study.

We will evaluate the feasibility (technical performance), acceptability (respondent tolerance and impact on study infrastructure), and cost (operations, time, and effort) of each recruitment and retention strategy using pre-determined measures. We will compare these findings and use them as a basis to inform the strategies, or combinations of strategies, that might be used in the Main Study of the NCS.

Frequency of Response: See above descriptions.

Affected Public: Pregnant women and their children.

The additional annualized cost to respondents over the two-year data collection period for all three recruitment strategies combined is estimated at annualized respondent cost of $*75,000* (based on $10 per hour). This is calculated as estimating 15,000 respondents across all three recruitment strategies, contacted once per visit, at an estimated average of .5 hours per response, for a total estimated annual respondent burden as 7,500 hours. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to minimize

the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland 20892, or call non-toll free number (301) 496–1877 or E-mail your request, including your address, to *glavins@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: November 5, 2010.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. 2010–28701 Filed 11–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; California Health Interview Survey Cancer Control Module (CHIS–CCM) 2011 (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: California Health Interview Survey Cancer Control Module (CHIS–CCM) 2010. *Type of Information Collection Request: Revision. Need and Use of Information Collection:* The NCI has sponsored five Cancer Control Modules in the California Health Interview Survey (CHIS), and will be sponsoring a sixth to be administered in 2011. CHIS is a telephone survey that collects population-based, standardized health-related data to assess California's progress in meeting Healthy People 2010 objectives for the nation and the State. The CHIS sample is designed to provide statistically reliable estimates statewide, for California counties, and for California's ethnically and racially diverse population. Initiated by the UCLA Center for Health Policy Research, the California Department of Health Services, and the California Public Health Institute, the survey is funded by a number of public and private sources. It was first administered in 2001 to 55,428 adults and subsequently in 2003 to 42,043 adults, in 2005 to 43,020 adults, and in 2007 to 48,150 adults. These adults are a representative sample of California's non-institutionalized population living in households. CHIS 2011 is planned for continual administration to 48,150 adults and 3,316 adolescent Californians. This study will allow NCI to examine patterns and trends in cancer screening and follow-up, as well as to study other cancer-related topics such as tobacco control, diet, physical activity, obesity, and human papillomavirus. Additionally, CHIS is designed to be comparable to the National Health Interview Survey (NHIS) data in order to conduct comparative analyses. CHIS provides enhanced estimates for cancer risk factors and screening among racial/ethnic minority populations. *Frequency of Response:* Once. *Affected public:* Individuals. *Types of Respondents:* U.S. adults and adolescents (persons 12 years of age and older). The total annual burden hours requested are 2,177 (see Table 1). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondent	Form type	Number of respondents	Frequency of response	Average time per response—minutes/hours	Annual hour burden
Adults	Adult Pilot	50	1	8/60 (0.133)	6.67
	Adult Survey	16,000	1	8/60 (0.133)	2,133.33
Adolescents	Adolescent Pilot	6	1	2/60 (0.033)	0.20
	Adolescent Survey	1,100	1	2/60 (0.033)	36.67
Total		17,156			2,176.87

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, PhD, Project Officer, National Cancer Institute, EPN 4094, 6130 Executive Boulevard MSC 7344, Bethesda, Maryland 20852–7344, or call non-toll

free number 301–496–4675 or e-mail your request, including your address to: *breenn@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: November 9, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–28648 Filed 11–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Income Withholding for Support (IWO).

OMB No.: 0970–0154.

Description

Use of the OMB-approved Income Withholding for Support form falls under the authority of section 466 of the Act, 42 U.S.C. 666. Section 466(b)(6)(A)(ii) of the Act requires that the notice given to the employer for income withholding in IV–D cases shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order for all IV–D cases. Section 466(a)(8)(B)(iii) of the Act requires that section 466(b)(6)(A)(ii) of the Act be applicable also to non-IV–D income withholding orders. These provisions clearly require all individuals and entities to use a form developed by the Secretary of HHS to notify employers of the income withholding order for child support in all IV–D and non-IV–D cases.

OCSE requires States' automated systems to be able to automatically generate and download data to the OMB approved income withholding form. If child support orders are established by the child support agency, necessary information is already contained within the automated system for downloading into income withholding orders. If a court or other tribunal has issued a child support order, then agency staff enter the terms of the order into the automated system for use in issuing income withholding orders. Copies of the income withholding order are made for all necessary parties, and copies are transmitted to the employer/income withholder by mail or through the OCSE electronic income withholding order (e-IWO) portal.

The Income Withholding for Support form and instructions were updated for consistency and clarity in light of numerous comments suggesting changes, based on comments received during the 60-day comment period of the 1st **Federal Register** Notice publication.

Respondents: State Child Support Agencies and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Income Withholding for Support (Form)	58	0	0	0
e-IWO Record Layouts	58	0	0	0

Estimated Total Annual Burden Hours: 0.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7285. *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV. Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–28615 Filed 11–12–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2336–FN]

Medicare and Medicaid Programs; Approval of Det Norske Veritas Healthcare for Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve Det Norske Veritas Healthcare (DNVHC) for recognition as a national accreditation program for critical access hospitals seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice of approval is effective December 23, 2010, through December 23, 2014.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospitals (CAHs) provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. The minimum requirements that a CAH must meet to participate in Medicare are set forth in regulation at 42 CFR part 485, subpart F. Conditions for Medicare payment for CAHs are set forth at § 413.70. Applicable regulations concerning provider agreements are located in 42 CFR part 489, and those pertaining to facility survey and

certification are in 42 CFR part 488, subparts A and B.

For a CAH to enter into a provider agreement with the Medicare program, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1820 of the Act, and 42 CFR part 485 of the regulations. Subsequently, the CAH is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization (AO) that all applicable Medicare conditions are met or exceeded, we may "deem" that provider entity as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation. A national AO applying for deeming authority under 42 CFR part 488, subpart A must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

II. Deeming Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for deeming authority is conducted in a timely manner. The statute provides us 210 calendar days after the date of receipt of a complete application, with any documentation necessary to make a determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice and Response to Comments

In the July 26, 2010 **Federal Register** (75 FR 43531), we published a proposed notice announcing DNVHC's request for approval as a deeming organization for CAHs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4, we conducted a review of DNVHC's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of DNVHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of DNVHC's CAH accreditation standards to our current Medicare CAH conditions of participation (CoPs).
- A documentation review of DNVHC's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and DNVHC's ability to provide continuing surveyor training.

+ Compare DNVHC's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate DNVHC's procedures for monitoring providers or suppliers found to be out of compliance with DNVHC's program requirements. The monitoring procedures are used only when DNVHC identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

+ Assess DNVHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish DNVHC's ability to provide us with electronic data and reports necessary for effective validation and assessment of DNVHC's survey process.

+ Determine the adequacy of staff and other resources.

+ Review DNVHC's ability to provide adequate funding for performing required surveys.

+ Confirm DNVHC's policies with respect to whether surveys are announced or unannounced.

+ Obtain DNVHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the July 26, 2010 proposed notice also solicited public comments regarding whether DNVHC's requirements met or exceeded the Medicare CoPs for CAHs. We received five comments in response to our proposed notice.

All of the commenters expressed support for DNVHC's application for CAH deeming authority. The commenters stated that DNVHC's standards are clearly written and closely align with the Medicare CoPs, and that DNVHC's accreditation program provides CAHs with a viable alternative to other healthcare AOs.

IV. Provisions of the Final Notice

A. Differences Between DNVHC's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared DNVHC's CAH accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of DNVHC's deeming application, which were conducted as described in section III. of this final notice, yielded the following:

- To meet the requirements at § 485.641(b)(4), DNVHC revised its crosswalk to ensure deficiencies regarding credentialing and quality assurance are correctly cited and cross-walked to the Medicare requirements.
- To ensure consistent and accurate documentation, DNVHC revised its onsite survey protocol to require surveyors use and forward all surveyor worksheets to the corporate office for inclusion in the survey file.
- To meet the survey process requirements at appendix W of the SOM, DNVHC revised its policies to require the medical record sample size be no less than 20 inpatient records.
- To meet the requirements at appendix W of the SOM, DNVHC revised its policies to require the conduct of patient interviews during the survey.
- To meet the requirements at section 5075.9 of the SOM, DNVHC revised its policies to require an onsite survey within 45 calendar days for complaints triaged as operational requiring a special survey.
- To meet the requirements at § 485.608(d), DNVHC revised its standards to address the certification or registration requirements of CAH personnel.
- To meet the requirements at § 485.618(c)(2) and § 485.618(d)(1), DNVHC revised its standards to replace the term physician with "doctor of medicine or osteopathy."
- To meet the requirements at § 485.618(d)(3)(iii) through § 485.618(d)(4), DNVHC revised its onsite surveyor protocol to require surveyors to verify, if applicable, that the CAH has received permission from

CMS to use registered nurses with training and experience as qualified professionals in emergency care, on a temporary basis, be included in the list of personnel immediately available to provide emergency care.

• To meet the requirements at § 485.620, DNVHC revised its standards to address the number of beds and length of stay requirements for CAHs.

• To meet the requirements at § 485.623(b), DNVHC revised its standards to include housekeeping and preventive maintenance programs.

• To meet the requirements at § 485.623(c)(3), DNVHC revised its standards to ensure the CAH provides an emergency fuel supply.

• To meet the requirements at § 485.623(d)(7)(iv), DNVHC revised its standards to include the reference to the National Fire Protection Association (NFPA) Tentative Interim Amendments (TIA) 00–01 (101).

• To meet the requirements at § 485.623(d)(7)(i) through § 485.623(d)(7)(iv), DNVHC revised its standards to ensure alcohol-based dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code.

• To meet the requirements at § 485.635(a)(3)(i), DNVHC revised its standards to ensure the CAH's policies include a description of the services provided, either directly or through an agreement or arrangement.

• To meet the requirements at § 485.635(a)(3)(iii), DNVHC revised its standards to ensure the CAH's policies include guidelines for healthcare conditions that may require a patient referral.

• To meet the requirements at § 485.635(a)(4), DNVHC revised its standards to require that a group of professional personnel review the CAH policies on an annual basis.

• To meet the requirements at § 485.635(b)(1), DNVHC revised its standards to ensure direct services of the CAH include the medical history, physical examination, specimen collection, assessment of health status, and treatment for a variety of medical conditions.

• To meet the requirements at § 485.635(b)(3), DNVHC revised its standards to ensure staff and patients of the CAH are not exposed to radiation hazards.

• To meet the requirements at § 485.635(d)(3), DNVHC revised its standards to ensure drugs and biologicals are administered by and under the supervision of a registered nurse, a doctor of medicine or osteopathy, or, where permitted, a physician assistant, in accordance with written and signed orders.

• To meet the requirements at § 485.635(e), DNVHC revised its standards to ensure therapy services provided at the CAH are consistent with the requirements at § 409.17 of our rules.

• To meet the requirements at § 485.638(a)(4)(i), DNVHC revised its standards to ensure the patient's medical record include a brief summary of the episode.

• To meet the requirements at § 485.638(c), DNVHC revised its standards to ensure clinical records are retained longer than six years from the date of the record's last entry, if such is required by State statute, or if the records are needed for a pending proceeding.

• To meet the requirements at § 485.639(b)(3), DNVHC revised its standards to ensure patients receiving surgical services at the CAH are evaluated for proper anesthesia recovery by a qualified practitioner.

• To meet the requirements at § 485.641(b)(1), DNVHC revised its standards to ensure all CAH services that affect patient health and safety are evaluated.

• To meet the requirements at § 485.645(a)(2), DNVHC revised its standards to ensure the CAH provides no more than 25 inpatient beds.

• To meet the requirements at § 485.645(d)(8), DNVHC revised its standards to address the requirement that if the CAH provides or obtains dental services from an outside resource, that service must be in accordance with the requirements at § 483.55 and § 483.75(h).

• To meet the Skilled Nursing Facilities (SNF) requirements applicable to swing beds at § 483.12(a)(1), DNVHC revised its standards to ensure transfer and discharge of a patient includes transfer to a bed outside of the certified facility.

• To meet the SNF swing bed requirements at § 483.20(b)(2), DNVHC revised its standards to ensure the comprehensive assessment is completed within 14 calendar days after admission and not less than every 12 months.

• To meet the requirements at § 483.20(k)(1)(ii), DNVHC revised its standards to ensure that the comprehensive care plan addresses situations where services that would be otherwise required under § 483.25 are not provided due the patient's right to refuse treatment under § 483.10(b)(4).

• To meet the requirements at § 483.20(l)(2), DNVHC revised its standards to ensure the discharge summary includes a final summary of the patient's status and is available for release to authorized persons and agencies, with the consent of the patient or legal representative.

• To meet the requirements at § 412.25(a)(2), DNVHC revised its standards to ensure the CAH's written admission criteria is applied uniformly to both Medicare and non-Medicare patients.

• To meet the requirements at § 412.25(d), DNVHC revised its standards to ensure the CAH has only one psychiatric or rehabilitation unit excluded from the prospective payment systems.

• To meet the requirements at § 412.27(d)(1), DNVHC revised its standards to ensure the CAH provides an adequate number of qualified doctors of medicine and osteopathy for essential psychiatric services.

• To meet the requirements at § 482.11(b)(2), DNVHC revised its standards to require hospitals located in States that do not provide licensure meet the approved standards established by that State.

• To meet the requirements at § 482.12(c)(2) through § 482.12(c)(4)(ii), DNVHC revised its standards to address who can admit patients.

• Regarding our capitalization and capital plan requirements for health maintenance organizations (HMOs) and civil monetary penalties (CMP) that operate hospitals, DNVHC revised its standards to ensure, with respect to such entities, the institutional plan and budget include the following requirements:

+ The facilities do not provide common services at the same site.

+ The facilities are not available under a contract of reasonable duration.

+ Full and equal medical staff privileges in the facilities are not available.

+ Arrangements with these facilities are not administratively feasible.

+ The purchase of these services is more costly than if the health maintenance organization (HMO) or competitive medical plan (CMP) provided services directly.

• To meet the requirements at § 485.618, DNVHC revised its standards to clarify that emergency services must be provided directly.

• To meet the requirements at § 482.13(e)(13), DNVHC revised its standards to address the requirement that States are free to have restraint and seclusion requirements by statute or regulation that are more restrictive than CMS standards.

• To meet the requirements at § 482.21, DNVHC revised its standards to require that hospitals maintain and

demonstrate evidence of its quality assessment and performance improvement program (QAPI) program for review by CMS.

• To meet the requirements at § 482.21(a)(1), DNVHC revised its standards to ensure QAPI is an ongoing program that shows measurable improvements in indicators for which there is evidence that it will improve health outcomes and identify and reduce medical errors.

• To meet the requirements at § 482.21(a)(2), DNVHC revised its standards to ensure the hospital's QAPI program includes aspects of performance that assess process of care, hospital service, and operations.

• To meet the requirements at § 482.21(c)(2), DNVHC revised its standards to address the hospital's responsibility to, among other things, implement preventive actions and mechanisms that include feedback and learning throughout the hospital as part of its performance improvement activities.

• To meet the requirements at § 482.21(d)(2), DNVHC revised its standards to clarify that a hospital may chose, as one of its quality initiatives, to develop and implement an information technology system to improve patient safety and quality.

• To meet the requirements at § 482.23(c), DNVHC revised its standards to ensure all drugs and biologicals are administered under the orders of a practitioner responsible for the care of the patient as specified at § 482.12(c).

• To meet the requirements at § 482.23(c)(3), DNVHC revised its standards to include the requirement that blood transfusions and intravenous medications must be administered in accordance with State laws and approved medical staff policies and procedures.

• To meet the requirements at § 482.23(c)(4), DNVHC revised its standards to require blood transfusion reactions be reported immediately to the attending physician.

• To meet the requirements at § 482.30(a)(2), DNVHC revised its standards to address situations where CMS has determined that the utilization review (UR) procedures established by a State under title XIX of the Act are superior to those listed in 42 CFR part 482, thus requiring hospitals in that State to meet the utilization control requirements at § 456.50 through § 456.245 of this chapter of the regulations.

• To meet the requirements at § 482.30(c)(4) and § 482.30(e)(2), DNVHC revised its standards to require that the CAH review cases where the patient's length of stay exceeds the mean length of stay for the applicable diagnostic-related group (DRG) and the hospitals charges for covered services exceed the DRG payment rate.

• To meet the requirements at § 482.30(d)(1)(i) through § 482.30(d)(3), DNVHC revised its standards to ensure determinations regarding admissions or continued stays are made by the practitioner responsible for the patient as specified in § 482.12(c).

• To meet the requirements at § 482.30(e)(ii), DNVHC revised its standards to require that the utilization review committee conduct a periodic review of each current inpatient receiving hospital services during a continuous period of extended duration for hospitals not paid under the prospective payment system.

• To meet the requirements at § 482.42(a)(2), DNVHC revised its standards to require the infection control officer maintain a log of incidents related to infections and communicable diseases.

• To meet the requirements at § 482.43(e), DNVHC revised its standards to require that the CAH periodically reevaluate its discharge planning process.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that DNVHC's requirements for CAHs meet or exceed our requirements. Therefore, we approve DNVHC as a national accreditation organization for CAHs that request participation in the Medicare program, effective December 23, 2010, through December 23, 2014.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: October 27, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–28666 Filed 11–12–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Special Emphasis Panel for R01 Applications.

Date: December 10, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Liver Ancillary Studies.

Date: December 13, 2010.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Innate Immunity and Experimental Crohn's Disease.

Date: December 17, 2010.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28706 Filed 11–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 7–8, 2010.

Time: December 7, 2010, 12 p.m. to 6 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee will review selected human gene transfer protocols, an application to certify a new host-vector system for K. lactis under Appendix I of the NIH Guidelines for Research Involving Recombinant DNA Molecules and discuss related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html.*

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: December 8, 2010, 8 a.m. to 12:30 p.m.

Agenda: The NIH RAC will discuss selected human gene transfer protocols, and related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892. 301–496–9838. *georgec@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 5, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28704 Filed 11–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given of the cancellation of the Advisory Committee on Training in Primary Care Medicine and Dentistry, November 15, 2010, 8:30 a.m. to 4:30 p.m., and November 16, 2010, 8 a.m. to 2 p.m., at the Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20910, which was published in the **Federal Register** on October 19, 2010, FR Doc. 2010–26205 (75 FR 64318).

Dated: November 8, 2010.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–28693 Filed 11–10–10; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Epi-Centers for the Prevention of Healthcare-Associated Infections, Antimicrobial Resistance and Adverse Events, Funding Opportunity Announcement CI11–001; Initial Review

Correction: This notice was published in the **Federal Register** on September 14, 2010, Volume 75, Number 177, page 55803. The location of the meeting has been changed to the following:

Place: 12 Executive Park Drive, Atlanta, Georgia 30333.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–28597 Filed 11–12–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases, (BSC, OID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–5 p.m., December 6, 2010.

Place: CDC, Global Communications Center, 1600 Clifton Road, NE., Building 19, Auditorium B1–B2, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, in the following areas: strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of OID and the national centers.

Matters to be Discussed: The agenda will include OID and center updates, followed by a focused discussion to solicit recommendations from the board on a strategic document designed to increase the public health impact of CDC's infectious disease prevention and control efforts.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road, NE., Mailstop D10, Atlanta, Georgia 30333, Telephone: (404)639–4461.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–28581 Filed 11–12–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities Recombinant DNA Research: Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

ACTION: Notice of consideration of proposed actions under the *NIH Guidelines.*

SUMMARY: A request to certify *Kluyveromyces lactis* as a new host-vector system has been submitted to the NIH Office of Biotechnology Activities (OBA). The data to be considered for certifying a new host-vector system can be found in Appendix I of the *NIH Guidelines.* A new host-vector system may be certified only after review by the NIH Recombinant DNA Advisory Committee (RAC) and specifically approved by the NIH Director as a Major Action.

Part of this request is to exempt from the *NIH Guidelines* certain types of research when performed in *K. lactis,* if *K. lactis* and its affiliated plasmids meet the requirements for certification as a host-vector system. Research that is exempt from the *NIH Guidelines* when performed with other certified host-vector systems can be found in Appendix C of the *NIH Guidelines.*

DATES: The public is encouraged to submit written comments on these proposed actions. Comments may be submitted to OBA in paper or electronic form at the OBA mailing, fax, and e-mail addresses shown below under the heading **FOR FURTHER INFORMATION CONTACT**. The NIH will consider all comments submitted by December 1, 2010. Written comments submitted by December 1, 2010 will be reproduced and distributed to the RAC for consideration at its December 7–8, 2010 meeting. In addition, an opportunity for public comment will be provided at that meeting. Please check the meeting agenda for the time of this discussion (*http://oba.od.nih.gov/rdna_rac/rac_meetings.html*). All written comments received in response to this notice will be available for public inspection at the NIH OBA office, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892 (telephone, 301–496–9838), weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: OBA by e-mail at *oba@od.nih.gov,* or telephone at 301–496–9838, if you have questions, or require additional information about these proposed actions. Comments may be submitted to the same e-mail address or by fax at 301–496–9839 or sent by U.S. mail to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, Maryland 20892–7985. For additional information about the RAC meeting at which these proposed actions will be deliberated, please visit the NIH OBA Web site at: <*http://oba.od.nih.gov/oba/index.html*>.

SUPPLEMENTARY INFORMATION: OBA has received a request from the Institutional Biosafety Committee at New England BioLabs to exempt from the requirements of the *NIH Guidelines* research with certain plasmids when performed in *K. lactis.* In order for a broad class of research to qualify for exemption, it must be determined by the NIH Director that the research does not pose a significant risk to human health or the environment (Section III–F–6). One way to exempt a broad class of research from the requirements of the *NIH Guidelines* is to perform the research in specific certified host-vector systems (as outlined in Appendix C of the *NIH Guidelines*). Currently research with only three certified host-vector systems is exempt from the *NIH Guidelines.* These three certified systems are based upon two bacterial genera: *Escherichia* (*E. coli* K–12) and *Bacillus* (*B. subtilis* or *B. licheniformis*) and one lower eukaryotic genus: *Saccharomyces* (*S. cerevisiae* or *S. uvarum*). In order to certify a new host-vector system, data as outlined in Appendix I–II–B of the *NIH Guidelines* must be submitted for review. Specifically, this application will be considered under Appendix I–II–B–1 (Host-Vector 1 Systems Other than *Escherichia coli* K–12). Data to be considered include: (i) The strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction, survival, and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and the type of information that is exchanged; and any relevant information about its pathogenicity or toxicity; (ii) a description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information; and (iii) a general description of the range of experiments contemplated with emphasis on the

need for developing such an Host-Vector 1 system.

Background information may be obtained by contacting NIH OBA via e-mail at *oba@od.nih.gov*. Alternatively, information is available on the OBA Web site at *http://oba.od.nih.gov/oba/news_events_oba.html*.

Dated: November 3, 2010.

Jacqueline Corrigan-Curay,

Acting Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. 2010–28698 Filed 11–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Various Contract Related Forms That Will Be Included in the Homeland Security Acquisition Regulation, DHS Form 0700–01, DHS Form 0700–02, DHS Form 0700–03, DHS FORM 0700–04

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 60–Day Notice and request for comments; Extension without Change, 1600–0002.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until January 14, 2011. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to the Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS Attn.: Camara Francis, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528, *Camara.Francis@hq.dhs.gov,* 202–447–5904.

SUPPLEMENTARY INFORMATION: This information collection under the HSAR is necessary in order to implement applicable parts of the FAR (48 CFR). The four forms under this collection of information request are used by offerors, contractors, and the general public to comply with requirements in contracts awarded by the Department of Homeland Security (DHS). The four forms are DHS Form 0700–01, Cumulative Claim and Reconciliation Statement; DHS Form 0700–02, Contractor's Assignment of Refund, Rebates, Credits and Other Amounts; DHS Form 0700–03, Contractor's Release; and DHS Form 0700–04, Employee Claim for Wage Restitution. These four forms will be used by contractors and/or contract employees during contract administration.

The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration and the Department of Labor. If this information is not collected, the DHS could inadvertently violate statutory or regulatory requirements and the DHS's interest concerning inventions and contractor's claims would not be protected.

There has been an increase in the estimated annual burden hours previously reported for this collection. An adjustment in annual burden is necessary at this time in the amount of 1534 actions and hours. The initial annual burden was based on a lower number of contract actions which related to the fact that DHS was a new agency with consolidated acquisition procedures, processes, and policies. Although, there is an increase in the estimated burdened hours, there is no change in the information being collected.

The Office of Management and Budget 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, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

Title: Various contract related forms that will be included in the Homeland Security Acquisition Regulation.

OMB Number: 1600–0002.

Frequency: On Occasion.

Affected Public: Private Sector.

Number of Respondents: 8,635.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 8,635.

Total Burden Cost (capital/startup): $236,253.60.

Dated: November 2, 2010.

Richard Spires,

Chief Information Officer.

[FR Doc. 2010–28575 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Regulation on Agency Protests

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 60-Day Notice and request for comments; Extension without Change, 1600–0004.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until January 14, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS Attn.: Camara Francis, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528, *Camara.Francis@hq.dhs.gov,* 202–447–5904.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR); 48 CFR Chapter 1 provides general procedures on handling protests submitted by contractors to federal

agencies. This regulation provides detailed guidance for contractors doing business with acquisition offices within the Department of Homeland Security (DHS) to implement the FAR. FAR Part 33.103, Protests, Disputes, and Appeals prescribe policies and procedures for filing protests and for processing contract disputes and appeals. DHS will not be asking for anything outside of what is already required in the FAR. Should anything outside the FAR arise, DHS will submit a request for Office of Management and Budget (OMB) approval. The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with the Department's Components. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of agency protests.

According to FPDS, the number of protest has increased each year over the past two years in annual respondent and burden hours. This increase in current protest activity is not the result of a deliberate program change, but from a new estimate of actions that are not controllable by the Federal government. Although, the number of protest has increased, there has not been any change in the information being collected.

The Office of Management and Budget 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, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

Title: Regulation on Agency Protests.

OMB Number: 1600–0004.

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 75.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 150.

Total Burden Cost (capital/startup): $4,104.00.

Dated: November 2, 2010.

Richard Spires,

Chief Information Officer.

[FR Doc. 2010–28574 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0052]

Privacy Act of 1974; Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records." This system of records will allow the Department of Homeland Security Office of Operations Coordination and Planning, including the National Operations Center, to collect, plan, coordinate, report, analyze, and fuse information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from federal, state, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the Department.

Some of the records in this system are in part transferred from the Department of Homeland Security/Information Analysis and Infrastructure Protection—001 Homeland Security Operations Center Database system of records, April 15, 2005, with the overall intent of narrowing the focus of these records to the specific purpose outlined in this system of records notice. It is the Department's intent, after all records are transferred into this and other system of records, to retire the Department of Homeland Security/Information Analysis and Infrastructure Protection—001 Homeland Security Operations Center Database system of records.

Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2010. This new system will be effective December 15, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0052 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax*: 703–483–2999.
- *Mail*: Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions*: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket*: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Michael Page (202–357–7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS), including the National Operations Center (NOC), proposes to establish a new DHS system of records titled, "DHS/OPS—003 Operations Collection, Planning, Coordination,

Reporting, Analysis, and Fusion System of Records."

This system of records will allow DHS/OPS, including the NOC, to collect, plan, coordinate, report, analyze, and fuse information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from federal, state, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the Department.

OPS serves as a joint operations coordination and planning capability at the strategic level to support internal DHS operational decision making, DHS leadership, and participation in interagency operations. OPS integrates DHS and interagency planning and operations coordination in order to prevent, protect, and respond to and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters.

The NOC serves as the nation's homeland security center for information sharing and domestic incident management, dramatically increasing coordination between federal, state, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals. The NOC collects and fuses information from a variety of sources everyday to help deter, detect, and prevent terrorist acts as well as to prepare for, respond to, and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters. Operating 24 hours a day, seven days a week, 365 days a year, the NOC provides real-time situational awareness and monitoring of the homeland, coordinates incidents and response activities, and, in conjunction with other DHS components, issues advisories and bulletins concerning threats to homeland security, including natural disasters, as well as specific protective measures. Information on domestic incident management is shared with state Fusion Centers and Emergency Operations Centers (EOC) at all levels through Watch Officer Desks located in the NOC.

The purpose of this system is to:

1. *Collect, plan, coordinate, and analyze* all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals; and

2. *Report, integrate, and fuse* such information throughout DHS in order to share information, increase coordination, identify and assess the nature and scope of information and understand risks in light of potential or actual vulnerabilities to the homeland; and help deter, detect, and prevent terrorist acts as well as to prepare for, respond to, and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters.

DHS is authorized to implement this program primarily through 5 U.S.C. 301, 552, 552a; 44 U.S.C. 3101; 6 U.S.C. 121; §§ 201 and 514 of the Homeland Security Act of 2002, as amended; § 520 of the Post Katrina Emergency Management Reform Act; 44 U.S.C. 3101; Executive Order (E.O.) 12958; E.O. 9397; E.O. 12333; E.O. 13356; E.O. 13388; and Homeland Security Presidential Directive 5. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse homeland security information coming into and going out of OPS, including the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, State, tribal, local, international, foreign agency, or other appropriate entity including the privacy sector in their role aiding OPS in their mission; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Consistent with DHS's information sharing mission, information contained in the DHS/OPS—003 Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

DHS is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the Federal Register a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the

agency. Below is the description of the DHS/OPS—003 Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/OPS—003

SYSTEM NAME:

DHS/OPS—003 Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records.

SECURITY CLASSIFICATION:

Unclassified, For Official Use Only, Law Enforcement Sensitive, and Classified.

SYSTEM LOCATION:

Records are maintained at the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS) National Operations Center (NOC) Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system may include:

- Federal, State, local, tribal, and territorial officials; foreign government and international officials; domestic security and emergency management officials; and private sector individuals who request assistance from, provide information to, are the subject of, or participate with the Department in activities related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters;
- Individuals who request assistance from the Department related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters;
- Individuals who provide information to the Department related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters, including Suspicious Activity Reports (SARs);
- Individuals who are the subject of, or are linked in any manner to, all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters with Departmental implications;
- Individuals participating with, involved in, or the subject of domestic security or law enforcement operations, with Departmental implications, where activity is planned or has taken place;
- Individuals participating with or involved in emergency management and first responder operations, with Departmental implications, and where activity is planned or has taken place;
- Individuals involved in natural disasters where activity is planned or has taken place;
- Individuals derived from intelligence information of interest to the Department;
- Individuals who make inquiries concerning all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters;
- Individuals who are or have been associated with DHS operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system may include:

- Full name;
- Date and place of birth;
- Social Security Number (Many state, local, tribal, territorial, domestic security, emergency management, and private sector individuals, organizations and agencies collect/use SSN's as an identifier and may be shared with the Department);
- Citizenship;
- Contact information including phone numbers and email addresses;
- Address;
- Physical description including height, weight, eye and hair color;
- Distinguishing marks including scars, marks, and tattoos;
- Automobile registration information;
- Watch list information;
- Medical records;
- Financial information;
- Results of intelligence analysis and reporting;
- Ongoing law enforcement investigative information;
- Historical law enforcement information;
- Information systems security analysis and reporting;
- Public source data including commercial databases, media, newspapers, and broadcast transcripts;
- Intelligence information including links to terrorism, law enforcement and any criminal and/or incident activity, and the date information is submitted;
- Intelligence and law enforcement information obtained from federal, state, local, tribal, and territorial agencies and organizations, foreign governments and international organizations; law enforcement, domestic security and emergency management officials; and private sector entities or individuals;
- Information provided by individuals, regardless of the medium, used to submit the information;
- Information obtained from the Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC), or on terrorist watchlists, about individuals known or reasonably suspected to be engaged in conduct constituting, preparing for, aiding, or relating to terrorism;
- Data about the providers of information, including the means of transmission of the data; (*e.g.* where it is determined that maintaining the identity of the source of investigative lead information may be necessary to provide an indicator of the reliability and validity of the data provided and to support follow-on investigative purposes relevant and necessary to a legitimate law enforcement or homeland security matter, such data may likely warrant retention. Absent such a need, no information on the provider of the information would be maintained)
- Scope of terrorist, law enforcement, or natural threats to the homeland;
- National disaster threat and activity information;
- The date and time national disaster information is submitted, and the name of the contributing/submitting individual or agency;
- Limited data concerning the providers of information, including the means of transmission of the data may also be retained where necessary. Such information on other than criminal suspects or subjects is accepted and maintained only to the extent that the information provides descriptive matters relevant to a criminal subject or organization and has been deemed factually accurate and relevant to ongoing homeland security situational awareness and monitoring efforts.
- Name of the contributing or submitting agency, organization, or individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 552, 552a; 44 U.S.C. 3101; 6 U.S.C. § 121; §§ 201 and 514 of the Homeland Security Act of 2002, as amended; § 520 of the Post Katrina Emergency Management Reform Act; 44 U.S.C. 3101; Executive Order (E.O.) 12958; E.O. 9397; E.O. 12333; E.O. 13356; E.O. 13388; and Homeland Security Presidential Directive 5.

PURPOSE(S):

The purpose of this system is to:

1. *Collect, plan, coordinate, and analyze* all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and

emergency management officials; and private sector entities or individuals; and

2. *Report, integrate, and fuse* such information throughout DHS in order to share information, increase coordination, identify and assess the nature and scope of said information and understand risks in light of potential or actual vulnerabilities to the homeland; and help deter, detect, and prevent terrorist acts as well as to prepare for, respond to, and recover from all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

I. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

J. To Federal and foreign government intelligence or counterterrorism agencies or state, local, tribal or territorial components where DHS becomes aware of an indication of a threat or potential threat to national or international security.

K. To Federal and foreign government intelligence or counterterrorism agencies or state, local, tribal or territorial components where the information is or may be terrorism-related information and such use is to assist in anti-terrorism efforts.

L. To an organization or individual in either the public or private sector, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS' officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, some personal information is captured. Personal data

may be retrieved by NOC tracker numbers, name, social security number and other identifiers listed under the Categories of Records Section. Most information is stored as free text and any word, phrase, or number is searchable.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

OPS is working with the DHS Records Officer to develop a NARA approved retention schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Operations Coordination and Planning, National Operations Center, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security is proposing to exempt this system from the notification, access, and amendment procedures of the Privacy Act. However, DHS/OPS will consider individual requests to determine whether or not information may be released. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to OPS FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals, other Federal, State, local and tribal agencies and organizations, domestic and foreign media, including periodicals, newspapers, and broadcast transcripts, public and classified data systems, reporting individuals, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3).

Dated: November 5, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–28566 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0086]

Privacy Act of 1974; Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records." This system of records will allow the Department of Homeland Security National Protection and Programs Directorate National Infrastructure Coordinating Center, an extension of the National Operations Center, to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from federal, state, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the National Infrastructure Coordinating Center. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the Federal Register. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2010. This new system will be effective December 15, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0086 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office,

Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) proposes to establish a new DHS system of records titled, "DHS/NPPD–001 National Infrastructure Coordinating Center (NICC) Records System of Records."

This system of records will allow DHS/NPPD, including the NICC (an extension of the National Operations Center (NOC)) to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the NICC.

The NICC provides the mission and capabilities to assess the operational status of the nation's 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, supports information sharing with National Infrastructure Protection Plan (NIPP) partners, and owners and operators of critical infrastructure facilities, and facilitates information sharing across and between the 18 national sectors.

The NICC is both an operational component of the NPPD Office of Infrastructure Protection (IP) and a watch operations element of the DHS NOC. The NICC operates 24 hours a day, 7 days a week, 365 days a year to facilitate coordination and information sharing with the CIKR sectors. The NICC produces consolidated CIKR reports for incorporation into situational awareness reports and for inclusion into the common operating picture.

DHS is authorized to implement this program primarily through the Homeland Security Act of 2002 as codified within 6 U.S.C. 321d(b)(1), 515. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse CIKR information coming into and going out of the NICC as well as the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, State, tribal, local, international, foreign agency, or other appropriate entity including the private sector in their role aiding the NICC in their mission; to agencies, organizations or individuals for the purpose of an audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Based on the information contained within this system of records, the NICC develops reports that are shared both within DHS and with the CIKR sectors. The NICC creates two reports, one with PII and one without. The one without PII is what is shared broadly with the CIKR sectors as well as the state and local fusion centers. Consistent with DHS's information sharing mission, information contained in the DHS/NPPD–001 NICC Records System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

DHS is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register.** This newly established system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/NPPD—001NICC Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/NPPD—001

SYSTEM NAME:

DHS/NPPD—001 NICC Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, For Official Use Only, Law Enforcement Sensitive, and Classified.

SYSTEM LOCATION:

Records are maintained at the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) National Infrastructure Coordinating Center (NICC) Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system may include:

- Federal, State, local, tribal, and territorial officials; foreign government and international officials; domestic security and emergency management officials; and private sector individuals who request assistance from, provide information to, are the subject of, or participate with the NICC in activities related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure;
- Individuals who request assistance from the NICC related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure;
- Individuals who provide information to the NICC related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters, including Suspicious Activity Reports (SARs) related to national infrastructure;
- Individuals who are the subject of, or are linked in any manner to, all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters with NICC implications;
- Individuals participating with, involved in, or the subject of domestic security or law enforcement operations, with NICC implications, where activity is planned or has taken place;
- Individuals participating with or involved in emergency management and first responder operations, with NICC, and where activity is planned or has taken place;
- Individuals involved in natural disasters where activity is planned or has taken place;
- Individuals derived from intelligence information of interest to the NICC; and
- Individuals who make inquiries concerning all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system may include:

- Full name;
- Date and place of birth;
- Social Security Number (Many state, local, tribal, territorial, domestic security, emergency management, and private sector individuals, organizations and agencies collect/use SSNs as an identifier and may be shared with the Department);
- Citizenship;
- Contact information including phone numbers and email addresses;
- Address;
- Physical description including height, weight, eye and hair color;
- Distinguishing marks including scars, marks, and tattoos;
- Automobile registration information;
- Watch list information;
- Medical records;
- Financial information;
- Results of intelligence analysis and reporting;
- Ongoing law enforcement investigative information;
- Historical law enforcement information;
- Information systems security analysis and reporting;
- Public source data including commercial databases, media, newspapers, and broadcast transcripts;
- Intelligence information including links to terrorism, law enforcement and any criminal and/or incident activity, and the date information is submitted;
- Intelligence and law enforcement information obtained from federal, state, local, tribal, and territorial agencies and organizations, foreign governments and international organizations; law enforcement, domestic security and emergency management officials; and private sector entities or individuals;
- Information provided by individuals, regardless of the medium, used to submit the information;
- Information obtained from the Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC), or on terrorist watchlists, about individuals known or reasonably suspected to be engaged in conduct constituting, preparing for, aiding, or relating to terrorism;
- Data about the providers of information, including the means of transmission of the data; (*e.g.* where it is determined that maintaining the identity of the source of investigative lead information may be necessary to provide an indicator of the reliability and validity of the data provided and to support follow-on investigative purposes relevant and necessary to a legitimate law enforcement or homeland security matter, such data may likely warrant retention. Absent such a need, no information on the provider of the information would be maintained)
- Scope of terrorist, law enforcement, or natural threats to the homeland;
- National disaster threat and activity information;
- The date and time national disaster information is submitted, and the name of the contributing/submitting individual or agency;
- Limited data concerning the providers of information, including the means of transmission of the data may also be retained where necessary. Such information on other than criminal suspects or subjects is accepted and maintained only to the extent that the information provides descriptive matters relevant to a criminal subject or organization and has been deemed factually accurate and relevant to ongoing homeland security situational awareness and monitoring efforts.
- Name of the contributing or submitting agency, organization, or individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002 as codified within 6 U.S.C. 321d(b)(1), 515 provides DHS, including the NICC and NOC, with authority to collect the information.

PURPOSE(S):

The purpose of this system is to provide the mission and capabilities to assess the operational status of the nation's 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, support information sharing with NIPP Partners, and the owners and operators of critical infrastructure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney

Offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations or critical infrastructure partners for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

I. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

J. To Federal and foreign government intelligence or counterterrorism agencies or state, local, tribal or territorial components, and critical infrastructure partners where DHS becomes aware of an indication of a threat or potential threat to national or international security.

K. To Federal and foreign government intelligence or counterterrorism agencies or state, local, tribal or territorial components, and critical infrastructure partners where the information is or may be terrorism-related information and such use is to assist in anti-terrorism efforts.

L. To an organization or individual in either the public or private sector, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS' officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, some personal information is captured. Personal data may be retrieved by name, Social Security number and other identifiers listed under the Categories of Records Section.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The NICC is working with the NPPD and DHS Records Officer to develop a NARA approved retention schedule.

SYSTEM MANAGER AND ADDRESS:

Director, National Infrastructure Coordinating Center, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security is proposing to exempt this system from the notification, access, and amendment procedures of the Privacy Act. However, DHS/NPPD will consider individual requests to determine whether or not information may be released. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to NPPD FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals, other Federal, State, local and tribal agencies and organizations, domestic and foreign media, including periodicals, newspapers, and broadcast transcripts, public and classified data systems, reporting individuals, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3).

Dated: November 5, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–28588 Filed 11–12–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–107]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 15, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within zero (0) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross.A.Rutledge@omb.eop.gov*; fax: 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov*; telephone 202–402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to implementing an FHA Energy Efficient Mortgage Innovation pilot program targeted to the single family housing market. The Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009, 123 Stat. 3034) (2010 Appropriations Act), which appropriated fiscal year 2010 funds for HUD, among other agencies, appropriated $50 million for an Energy Innovation Fund to enable HUD to catalyze innovations in the residential energy efficiency sector that have the promise of replicability and help create a standardized home energy efficient retrofit market. Of the $50 million appropriated for the Energy Innovation Fund, the 2010 Appropriations Act stated that "$25,000,000 shall be for the Energy Efficient Mortgage Innovation pilot program directed at the single family housing market." (*See* Pub. L. 111–117, at 123 Stat. 3089). The FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program) is designed by HUD to meet this statutory directive and provides funding to support that effort. Under the Retrofit Pilot Program, HUD, through FHA-approved lenders, will insure loans for homeowners who are seeking to make energy improvements to their homes.

Lender participation in the Retrofit Pilot Program is voluntary. To facilitate HUD's evaluation of lender performance and assessment of the success and replicability of the pilot program, HUD will select lenders to participate in the program. To be eligible for participation, lenders must submit an Expression of Interest that demonstrates the eligibility of the lender to participate in the Retrofit Pilot Program.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program.

Description of Information Collection: Lender eligibility to participate in the Retrofit Pilot Program.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: FHA-approved lenders.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 600, the estimated number of respondents is 15, the frequency response is one time, and the estimated number of hours per response is 40.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–28713 Filed 11–12–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee (ISAC). Comprised of 30 nonfederal invasive species experts and stakeholders from across the nation, the purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues.

Purpose of Meeting: The meeting will be held on December 7–9, 2010 in Washington, DC, and will focus primarily on Early Detection and Rapid Response as it relates to invasive species. The full ISAC will also consider a white paper entitled, *Invasive Species and Climate Change,* as drafted by the ISAC Task Team on Climate Change.

DATES: Meeting of the Invasive Species Advisory Committee: Tuesday, December 7, 2010 through Thursday, December 9, 2010. The meeting will be held 8 a.m. to 5 p.m. on Tuesday, December 7, 2010 and Wednesday, December 8, 2010. On Thursday, December 9, 2010, the meeting will begin at 8 a.m., and adjourn at 12 noon.

ADDRESSES: U.S. Department of Agriculture, Economic Research Service Conference Center, 1800 M Street, NW. (South Tower), Washington, DC 20036. The general session will be held in the Waugh Auditorium.

Note: All meeting participants and interested members of the public must be cleared through building security prior to being escorted to the meeting.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst and ISAC Coordinator, (202) 513–7243; Fax: (202) 371–1751,

Dated: November 8, 2010.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 2010–28653 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Developing Refuge Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The "Criteria for Developing Refuge Water Management Plans" (Refuge Criteria) are now available for public comment. The Refuge Criteria provide a common methodology, or standard, for efficient use of water by Federal Wildlife Refuges, State Wildlife Management Areas and Resource Conservation Districts that receive water under provisions of the Central Valley Project Improvement Act (CVPIA). They document the process and format by which Refuge Water Management Plans (Plans) should be prepared and submitted to Reclamation as part of the Refuge/District Water Supply Contracts and Memoranda of Agreement. The Refuge Criteria refer to Refuges, Wildlife Areas, and Resource Conservation Districts as Refuges. Those Refuges that entered into water supply contracts with Reclamation as a result of the CVPIA and subsequent Department of the Interior administrative review processes are required to prepare Plans using the Refuge Criteria.

DATES: Submit written comments by December 15, 2010.

ADDRESSES: Please mail comments to Ms. Christy Ritenour, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California, 95825, 916–978–5281, or e-mail at *critenour@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information or to obtain a copy of any water management plans, please contact Ms. Ritenour at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: In response to the Central Valley Project Improvement Act of 1992 and a 1995 Department of the Interior administrative review process, the Interagency Coordinated Program for Wetland and Water Use Planning (ICP) was formed. The ICP was comprised of representatives from the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the Grassland Resource Conservation District. The ICP developed the 1998 Task Force Report, which outlines past, present, and future wetland planning and management issues and a methodology for Refuge Criteria. To continue the work of the now disbanded ICP, an Interagency Refuge Water Management Team (IRWMT) was formed composed of the same agencies to continue working on wetland issues such as water delivery, including additional work on wetland Refuge Criteria. The IRWMT used the 1998 Task Force Report and

Reclamation's 1999 Conservation and Efficiency Criteria as the foundation for developing the water management planning requirements or criteria included in these Refuge Criteria. The Refuge Criteria also incorporated comments, ideas, and suggestions from Refuge/District managers, biologists, water conservation specialists, engineers, the CALFED Bay-Delta Program, and other Central Valley stakeholders. The Refuge Criteria were last updated in 2004 and the proposed 2010 update is currently under review. The Refuge Criteria apply to the following areas: Kern National Wildlife Refuge, Merced National Wildlife Refuge, Pixley National Wildlife Refuge, San Luis National Wildlife Refuge, Los Banos State Wildlife Area, Mendota State Wildlife Area, North Grassland State Wildlife Area, Volta State Wildlife Area, Grassland Resource Conservation District, Colusa National Wildlife Refuge, Delevan National Wildlife Refuge, Sacramento National Wildlife Refuge, Sutter National Wildlife Refuge, and Gray Lodge State Wildlife Area.

Public Disclosure: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 12, 2010.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 2010–28603 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Concession Contract; 2410–OYC

AGENCY: National Park Service, Interior.

ACTION: Public notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes a continuation of visitor services for the following expiring concession contract for a period of one year through September 30, 2011.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on September 30, 2010. The National Park Service has determined that the proposed continuation of visitor services is necessary in order to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Concession ID No.	Concessioner name	Park
LAKE004–88	Lake Mead Cruises	Lake Mead National Recreation Area.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

Dated: September 29, 2010.

Katherine H. Stevenson,

Associate Director, Business Services.

[FR Doc. 2010–28702 Filed 11–12–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N256; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before December 15, 2010.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see* **ADDRESSES** (*telephone:* 760–431–9440; *fax:* 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–25164A

Applicant: Catherine A. Little, Woodland, California. The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinectaconservatio*), the longhorn fairy shrimp (*Branchinectalongiantenna*), the Riverside fairy shrimp (*Streptocephaluswootoni*), the San Diego fairy shrimp (*Branchinectasandiegonensis*), and the vernal pool tadpole shrimp (*Lepiduruspackardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–25404A

Applicant: Summer N. Adleberg, San Diego, California. The applicant

requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryasedithaquino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–25864A

Applicant: Richard C. Stolpe, Carlsbad, California. The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinectaconservatio*), the longhorn fairy shrimp (*Branchinectalongiantenna*), the Riverside fairy shrimp (*Streptocephaluswootoni*), the San Diego fairy shrimp (*Branchinectasandiegonensis*), and the vernal pool tadpole shrimp (*Lepiduruspackardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–066621

Applicant: Naval Base Ventura County PointMugu, Point Mugu, California. The applicant requests an amendment to an existing permit (December 14, 2007, 72 FR 71145) to take (harass by survey and monitor nests) the light-footed clapper rail (*Ralluslongirostrislevipes*) in conjunction with surveys and monitoring activities throughout the range of the species in Ventura County, California for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Larry Rabin,

Regional Director, Region 8, Sacramento, California.

[FR Doc. 2010–28593 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and Cape Hatteras National Seashore Off-Road Vehicle Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Final Environmental Impact Statement for the Cape Hatteras National Seashore Off-Road Vehicle Management Plan.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2) (C), and the Council on Environmental Quality regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, announces the availability of the final environmental impact statement (FEIS) for the proposed Cape Hatteras National Seashore (Seashore) Off-Road Vehicle Management Plan (Plan/FEIS). The Plan/FEIS will enable NPS to develop regulations and procedures to manage off-road vehicle (ORV) use/access in the Seashore consistent with the Executive Orders on ORV use on Federal lands and NPS regulations.

DATES: The NPS will execute a Record of Decision no sooner than 30 days from the date of publication of the Notice of Availability of the FEIS in the **Federal Register** by the Environmental Protection Agency

ADDRESSES: Electronic copies of the document are available for public review online at *http://parkplanning.nps.gov/caha.* A limited number of compact disks (CDs) and hard copies of the FEIS are available at the Seashore headquarters, 1401 National Park Drive, Manteo, NC 27954. You may also request a hard copy or CD by contacting Superintendent Mike Murray, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954.

SUPPLEMENTARY INFORMATION: The purpose of the Plan/FEIS is to develop regulations and procedures that manage ORV use and access in the Seashore to protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor use experiences while minimizing conflicts among various users, and to promote the safety of all visitors. Executive Order 11644 of 1972, amended by Executive Order 11989 of 1977, requires certain Federal agencies permitting ORV use on Agency lands to designate specific trails and areas. Title 36, section 4.10 of the Code of Federal Regulations implements the Executive Orders by providing that routes and areas designated for ORV use in units of the National Park System shall be promulgated as special regulations. Therefore, this Plan/FEIS is necessary to bring the Seashore in compliance with Executive Orders 11644 and 11989, address the lack of an approved plan, and provide for protected species management in relation to ORV use. The FEIS evaluates two no action alternatives and four action alternatives for managing ORV use, and identifies their potential environmental consequences. Consistent with NPS laws, regulations, and policies, and the purpose of the Seashore, the FEIS describes Alternative F as the NPS preferred alternative. Alternative F provides a reasonably balanced approach to designating ORV routes and vehicle free areas while providing for the protection of park resources.

Alternative A would manage ORV use and access at the Seashore based on the 2007 Finding of No Significant Impact (FONSI) for the Interim Protected Species Management Strategy/Environmental Assessment and the Superintendent's Compendium 2007, as well as elements from the 1978 draft interim ORV management plan that were incorporated in Superintendent's Order 7. Alternative B would continue management in effect during 2008–2010. Under alternative B, management of ORV use would follow the terms described under alternative A, except as modified by the provisions of the consent decree, as amended. Modifications in the consent decree include changes to resource protection buffers and closures for various species at the Seashore and added restrictions related to night driving. Alternative C emphasizes seasonal designation of ORV routes. It would provide visitors to the Seashore with a degree of predictability regarding areas available for ORV use, as well as vehicle-free areas, based largely on the seasonal resource and visitor use characteristics of various areas in the Seashore.

Alternative D would give visitors to the Seashore the maximum amount of predictability regarding areas available for ORV use and vehicle-free areas for pedestrian use. Restrictions would be applied to larger areas over longer periods of time to minimize changes in designated ORV and non-ORV areas over the course of the year. Alternative E would provide use areas for all types of visitors to the Seashore with a wide variety of access for both ORV and pedestrian users, but often with controls or restrictions in place to limit impacts on sensitive resources. Interdunal road and ramp access would be improved, and more pedestrian access would be provided through substantial additions to parking capacity at various key locations that lend themselves to walking on the beach. Alternative E would provide more miles of ORV routes, shorter hours of ORV night closure during sea turtle nesting season, a park and stay program, and a self-contained vehicle camping program.

Alternative F, the NPS preferred alternative, is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users. Following consideration of public comment on the DEIS, Alternative F was revised to provide more pedestrian access adjacent to resource closures, where possible, and a more balanced approach to ORV routes and vehicle-free areas than Alternative F provided in the DEIS. To support access to both vehicle-free areas and designated ORV routes, alternative F would involve the construction of new parking areas, pedestrian access trails, ORV ramps, and improvements and additions to the interdunal road system.

The NPS Notice of Availability for the DEIS was published in the **Federal Register** on March 5, 2010. The DEIS was posted online at *http://parkplanning.nps.gov/caha* on March 5, 2010. The U.S. Environmental Protection Agency Notice of Availability for the DEIS was published on March 12, 2010, which opened the public comment period and established the closing date of May 11, 2010, for comments. Five public hearings were conducted in North Carolina and Virginia between April 26 and 29, 2010. Following a review of agency and public comment on the DEIS, NPS prepared a concern response report which contains responses to substantive comments. This report is included as an appendix to the FEIS.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954, (252) 473–2111 × 148.

The responsible official for this final EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: October 19, 2010.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–28710 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–X6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Concession Contract; 2410–OYC

AGENCY: National Park Service, Interior.

ACTION: Public notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of three years through November 30, 2013.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on November 30, 2010. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID No.	Concessioner name	Park
YELL077–05	Xanterra Parks & Resorts, Inc.	Yellowstone National Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

Dated: *October 4, 2010.*

Katherine H. Stevenson,

Associate Director, Business Services.

[FR Doc. 2010–28705 Filed 11–12–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000.L10200000.PI0000; HAG11–0061]

Notice of Public Meeting, John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the John Day/Snake Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below.

DATES: The JDSRAC meeting will begin at 8 a.m. (Pacific) on November 30, 2010.

ADDRESSES: The JDSRAC will meet at the Umatilla National Forest Headquarters located at 2517 SW Hailey Avenue, Pendleton, Oregon 97801. For a copy of material to be discussed or the conference call number, please contact the BLM Prineville District at the address below.

SUPPLEMENTARY INFORMATION: The JDSRAC will conduct a public meeting to discuss several topics, including the Blue Mountain Forest Plan Revision alternatives, recent information on Sage-grouse and wolf management; set goals for 2011 in a strategic planning session, and hear a presentation by Portland General Electric on the proposed Cascade Crossing Transmission Project. Public comment is scheduled from 1 p.m. to 1:15 p.m. (Pacific) November 30, 2010, during the Council Meeting. For a copy of information distributed to JDSRAC members, please contact the BLM Prineville District Office at (541) 416–6700 or at the address listed below.

FOR FURTHER INFORMATION CONTACT: Christina Lilienthal, Public Affairs Specialist, BLM Prineville District Office, 3050 NE Third, Prineville, Oregon 97754, (541) 416–6889 or e-mail: *christina_lilienthal@blm.gov.*

Stephen R. Robertson,

Associate District Manager, BLM Prineville District Office.

[FR Doc. 2010–28602 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N255; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before December 15, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*See* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Sedgwick County Zoological Society, Inc., Wichita, KS; PRT–23646A

The applicant requests a permit to import one male Amur leopard (*Panthera pardus orientalis*), bred in captivity for the purpose of enhancement of the survival of the species through conservation education and captive breeding. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kootenai Tribe of Idaho, Bonners Ferry, ID; PRT–24108A

The applicant requests a permit to export ovarian fluid collected at the Tribal hatchery, during normal aquaculture practices, of white sturgeon, (*Acipenser transmontanus*), for the purpose of enhancement of the survival of the species and scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dawn Zimmerman, Memphis, TN; PRT–22511A

The applicant requests a permit to import biological samples from wild brown hyenas (*Parahyaena brunnea*), for the purpose of scientific research.

Applicant: Drexel University, Dept. of Biology, Philadelphia, PA; PRT–26030A

The applicant requests a permit to import biological samples from mandrill (*Mandrillus leucophaeus*), red colobus (*Procolobus pennanti*), red-eared monkey (*Cercopithecus erythrotis*), leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), from Bioko Island, Equatorial Guinea, for the purpose of scientific research.

Applicant: Denver Zoological Gardens, Denver, CO; PRT–25258A

The applicant requests a permit to import one captive-born mandrill (*Mandrillus leucophaeus*), from the Toronto Zoo, Ontario, Canada for the purpose of enhancement of the survival of the species.

Applicant: Texas A&M University, Schubot Exotic Bird Health Center, College Station, TX; PRT–22077A

The applicant requests a permit to import biological samples from wild thick-billed parrots (*Rhynchopsitta pachyrhyncha*), from the state of Chihuahua, Mexico for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*), culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank Paino, Seaford, NY; PRT–26730A;

Applicant: John Dosch, Zanesville, OH; PRT–26632A;

Applicant: Mark Conklin, Fayetteville, GA; PRT–23647A.

Dated: November 5, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–28582 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N254; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 558–7725; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that: (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Endangered Species

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
19809A	Paul Wieser	75 FR 54909; September 9, 2010	October 20, 2010.
20084A	William Garrison	75 FR 54909; September 9, 2010	October 20, 2010.
19930A	Anthony J. Casola	75 FR 52971; August 30, 2010	October 21, 2010.
21574A	Selmer Anthony Erickson	75 FR 57977; September 23, 2010	November 3, 2010.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
14287A	Pennsylvania State University.	75 FR 52971; August 30, 2010	October 18, 2010.
717015	Natural History Museum of Los Angeles County.	75 FR 30428; June 1, 2010	October 19, 2010.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents.

Dated: November 5, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–28580 Filed 11–12–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Turbomachinery Blades, Engines, and Components Thereof, DN 2769;* the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of United Technologies Corporation, on November 5, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain turbomachinery blades, engines, and components thereof. The complaint names as respondents Rolls-Royce Group plc, London, United Kingdom and Rolls-Royce plc, London, United Kingdom.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(I) Explain how the articles potentially subject to the orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2769") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR *201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: November 5, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–28625 Filed 11–12–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Proposed Amendment to Consent Decree Under the Clean Water Act

Notice is hereby given that on November 8, 2010, a proposed Second Amendment to 2006 Consent Decree, pertaining to *United States and State of Indiana* v. *City of Indianapolis,* Civ. No. 1:06–cv–1456, was lodged with the United States District Court for the Southern District of Indiana.

In the original action, the United States sought civil penalties and injunctive relief for alleged violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1319 and 1342, in connection with the City's operation of its municipal wastewater and sewer system. In December 2006, the Court entered a Consent Decree which requires the City to reduce Combined Sewer Overflows (CSO) by, among other things, performing certain activities and constructing thirty-one (31) Combined Sewer Overflow (CSO) Control Measures in accordance with the City's Long Term Control Plan (LTCP). CSO Control Measure 16, as set forth in the 2006 Consent Decree, required the City to construct a shallow interceptor sewer having a total capacity of 24 million gallons.

On April 23, 2009, the Court approved and entered a First Amendment to the 2006 Consent Decree, which authorized the City to replace the shallow interceptor with a 54-million gallon capacity Deep Rock Tunnel Connector (DRTC), which allowed the City to avoid several environmental and right-of-way impediments to the project. The DRTC, as conceived, would have improved the overall level of control to be achieved by Indianapolis by increasing the system's storage capacity by approximately 30 million gallons, and reducing the system's projected annual CSO discharge volume from 600 million gallons to 480 million gallons. The change also would have allowed the City to capture hundreds of millions of gallons of raw sewage discharges from the City's largest CSO (CSO 008), three-and-one-half years earlier than would have occurred without the amendment.

While the First Amendment authorized the modification of CSO Control Measure 16, the proposed Second Amendment is much more extensive, and would authorize the modification of CSO Control Measures 16, 18, 22, 23, 24, 25, 26, 29, 30, and 31; the elimination of CSO Control Measures 27 and 28, and the addition of CSO Control measure 32. As a result of the proposed changes, the City is now expected to reduce the amount of the total annual discharge to about 414 million gallons, capture raw sewage discharges from another CSO earlier than originally anticipated, allow the City to achieve a flexibility that was missing from its original system design, and reduce the cost of the project by approximately $444 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Indiana* v. *City of Indianapolis,* D.J. Ref. 90–5–1–1–07292.

The proposed Second Amendment to 2006 Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, 10 West Market St., Suite 2100, Indianapolis, IN 46204 (contact Asst. U.S. Attorney Thomas Kieper (317–226–6333)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Gary Prichard (312–886–0570)). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. 202–514–0097, phone confirmation number 202–514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) for both the proposed Second Amendment and attached Table, payable to the U.S. Treasury or, if by e-mail or fax, forward

a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–28599 Filed 11–12–10; 8:45 am]

BILLING CODE 4410–15–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 May 14, 2010, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, 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 II:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

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 15, 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. 2010–28532 Filed 11–12–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Marine Well Containment Venture

Notice is hereby given that, on September 29, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Marine Well Containment Venture ("MWCV") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, new entities are now participating in the MWCV. Pursuant to Section 6(b) of the Act, the identities of the new entities participating in the venture are: Chevron Gulf of Mexico Response Co. LLC, Houston, TX; ConocoPhillips Marine Containment Holdings Co. LLC, Houston, TX; ExxonMobil Offshore Well Containment LLC, Houston, TX; and Shell Offshore Response Co. LLC, Houston, TX.

No other changes have been made in either the membership or planned activity of the venture. The composition of members in this venture may change, and MWCV intends to file additional written notifications disclosing all changes in membership.

On August 18, 2010, MWCV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 12, 2010 (75 FR 62570).

Patricia A. Brink,

Deputy Director of Operations Antitrust Division.

[FR Doc. 2010–28558 Filed 11–12–10; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Notice

TIME AND DATE: 10 a.m., Wednesday, November 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. Pilot Programs (3). Closed pursuant to some or all of the following: Exemptions (4) and (8).
2. Insurance Appeals (3). Closed pursuant to some or all of the following: Exemptions (4) and (6).
3. Personnel (2). Closed pursuant to some or all of the following: Exemption (2).
4. Consideration of Supervisory Activities (4). Closed pursuant to some or all of the following: Exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–28795 Filed 11–10–10; 4:15 pm]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 9 a.m., Thursday, November 18, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Interim Final Rule—Part 704 of NCUA's Rules and Regulations,

Corporate Credit Unions, Technical Corrections.

2. Proposed Rule—Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.

3. Insurance Fund Report and Premium/Assessment Ranges.

4. NCUA's 2011 Operating Budget.

5. NCUA's Overhead Transfer Rate.

6. NCUA's Operating Fee Scale.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–28808 Filed 11–10–10; 4:15 pm]

BILLING CODE P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National Transportation Safety Board Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Emily Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–0001, (202) 314–6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the National Transportation Safety Board:

The Honorable Christopher A. Hart, Vice Chairman, National Transportation Safety Board; PRB Chair.

The Honorable Mark R. Rosekind, Member, National Transportation Safety Board.

Steven Goldberg, Chief Financial Officer, National Transportation Safety Board.

Dr. John Cavolowsky, Director, Airspace Systems Program Office, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration.

Jerold Gidner, Special Counselor to the Assistant Secretary–Indian Affairs, Department of the Interior.

David L. Mayer, Managing Director, National Transportation Safety Board.

The Honorable Robert L. Sumwalt, III, Member, National Transportation Safety Board. (Alternate).

Florence Carr, Deputy Managing Director, Federal Maritime Commission. (Alternate).

Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigation Board. (Alternate).

Dated: November 8, 2010.

Candi Bing,

Federal Register Coordinator.

[FR Doc. 2010–28652 Filed 11–12–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0276]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on August 12, 2010.

1. *Type of submission, new, revision, or extension:* Extension

2. *The title of the information collection:* 10 CFR Part 35 "Medical Use of Byproduct Material"

3. *Current OMB approval number:* 3150–0010

4. *The form number if applicable:* N/A

5. *How often the collection is required:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking sources are reportable on occurrence. A certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition and revise the information on occurrence.

6. *Who will be required or asked to report:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation therefrom to humans for medical use.

7. *An estimate of the number of annual responses:* 246,581 ((NRC: 31,732 + 1,148 recordkeepers = 32,880) + (Agreement States: 206,239 + 7,462 recordkeepers = 213,701)).

8. *The estimated number of annual respondents:* 8,610 (1,148 for NRC Licenses and 7,462 for Agreement States).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,173,785 hours (156,538 for NRC Licenses and 1,017,247 for Agreement States).

10. *Abstract:* 10 CFR part 35, "Medical Use of Byproduct Material," contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. The 10 CFR part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation therefrom to humans for medical use.

The information in the required reports and records is used by the NRC to ensure that public health and safety is protected, and that the possession and use of byproduct material is in compliance with the license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 15, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0010), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 5th day of November, 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–28637 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0332]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* DOE/NRC Form 740M, "Concise Note" and NUREG/BR–0006, Revision 7, "Instructions for Completing Nuclear Material Transaction Reports, (DOE/NRC Forms 741 and 740M)."

2. *Current OMB approval number:* 3150–0057.

3. *How often the collection is required:* DOE/NRC Form 740M is requested as necessary to inform the U.S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in other reporting forms required under the US/IAEA Safeguards Agreement.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U.S. eligible list who have been notified in writing by the NRC that they are subject to part 75.

5. *The number of annual respondents:* 15.

6. *The number of hours needed annually to complete the requirement or request:* 113 hours.

7. *Abstract:* Licensees affected by part 75 and related sections of parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. The use of Form 740M enables the NRC to collect, retrieve, and analyze, and submit the data to IAEA to fulfill its reporting responsibilities.

Submit, by January 14, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0332. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0332. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of November 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–28636 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2010–0254]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18, issued to Exelon Generation Company, LLC (the licensee), for operation of the LaSalle County Station (LSCS), Units 1 and 2, located in LaSalle County, IL.

The proposed amendment would revise license paragraph 2.B.(5) for LSCS. The proposed change will enable LSCS to possess byproduct material from Braidwood Station (Braidwood), Units 1 and 2, Byron Station (Byron), Units 1 and 2, and Clinton Power Station (Clinton), Unit 1. Specifically, the revised license paragraph would enable the licensee to store low-level radioactive waste from Braidwood, Byron, and Clinton in the LSCS Interim Radwaste Storage Facility.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly

available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern

Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors." Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart L apply.

For further details with respect to this license amendment application, see the application for amendment dated January 6, 2010, as supplemented by letters dated August 20 and October 14, 2010, which are available for public inspection at the Commission's PDR, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

Dated at Rockville, Maryland, this 4th day of November 2010.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–28635 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0184]

Office of New Reactors; Notice of Availability of the Final Staff Guidance; Standard Review Plan, Section 13.6.6, Revision 0 on Cyber Security Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The NRC is issuing its Final Revision 0 to NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 13.6.6, Revision 0 on "Cyber Security Plan" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102630477). The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 0 of SRP Section 13.6.6 into the next revisions of the Regulatory Guide 1.206, "Combined License Applications for Nuclear Power

Plants," and related guidance documents.

Disposition: On May 13, 2010, the NRC staff issued the proposed Revision 0 on SRP Section 13.6.6 on "Cyber Security Plan," ADAMS Accession No. ML093560837. There were comments received on the proposed guidance (ADAMS Accession No. ML101810249). These comments were incorporated as appropriate and the details of disposition of the stakeholder's comments are available under ADAMS Accession No. ML102590155.

ADDRESSES: The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 3rd day of November 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–28634 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2010–0105]

Florida Power Corporation, et al.; Crystal River Unit 3 Nuclear Generating Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License No. DPR 72 issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR–3), located in Citrus County, Florida. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the required implementation date of March 31, 2010, for four new requirements of 10 CFR part 73. Specifically, CR–3 would be granted a second exemption, further extending the date for full compliance with four new requirements contained in 10 CFR 73.55, from November 15 and December 15 (the dates specified in a prior exemption granted by NRC on March 25, 2010), until December 15, 2011 and March 15, 2012, respectively. The licensee has proposed an alternate full compliance implementation date of March 15, 2012, which is approximately 2 years beyond the compliance date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the CR–3 site.

The proposed action is in accordance with the licensee's application dated September 8, 2010.

The Need for the Proposed Action

The proposed second scheduler exemption is needed to provide the licensee with additional time, beyond the previously approved by the NRC letter dated March 25, 2010, to implement four specific elements of the new requirements that involve significant physical upgrades to the CR–3 security system. The schedules used in the original scheduler exemption were based on the conceptual design information available to the licensee at the time of the submittal. At this time, the licensee has fully developed the design and has completed the discovery phase. Therefore, due to the unforeseen need for design changes necessary to achieve full compliance with the Final Rule, additional time is needed to complete the complex revised design and construction and associated analysis.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed action to further extend the implementation deadline for two items would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those hazards previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009; 74 FR 13926. There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of nonradiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of nonradiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, March 27, 2009; 74 FR 13926].

With its request to extend the implementation deadline, the licensee currently maintains a security system acceptable to the NRC and that will continue to provide acceptable physical

protection of CR–3 in lieu of the new requirements in 10 CFR part 73. Therefore, the extension of the implementation date for four elements of the new requirements of 10 CFR part 73 to December 15, 2011, and March 15, 2012, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the existing implementation deadline for those specific items of November 15, and December 15, 2010, as extended by the exemption granted on March 25, 2010. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for CR–3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on November 4, 2010, the NRC staff consulted with the Florida State official, Mr. William A. Passeti of the Florida Department of Health, Bureau of Radiation Control regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 8, 2010. Portions of the September 8, 2010, submittal contains security-related information and, accordingly, a redacted version of this letter is available for public review in the Agencywide Documents Access and Management System (ADAMS), Accession No. ML102530129. This document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, on November 5, 2010.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–28633 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013; NRC–2010–0343]

STP Nuclear Operating Company, South Texas Project Nuclear Power Plant, Units 3 and 4; Exemption

1.0 Background

By letters dated February 2, 2010 (Agency wide Documents Access and Management System (ADAMS) Accession Number ML100350219), March 23, 2010 (ADAMS Accession Number ML100880055) and July 21, 2010 (ADAMS Accession Number ML102070274), STP Nuclear Operating Company (STPNOC) submitted a request for an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.10: License required; limited work authorization. The U.S. Nuclear Regulatory Commission (NRC or the NRC staff) has reviewed this request for exemption, pursuant to 10 CFR 50.12, as it relates to STPNOC's application for combined licenses (COLs) for South Texas Project (STP) Units 3 and 4, which is currently under review by the NRC staff. This exemption would authorize STPNOC to install two crane foundation retaining walls (CFRWs) prior to issuance of the COLs. Granting this exemption would not constitute a commitment by the NRC to issue COLs for STP Units 3 and 4. STPNOC would install the CFRWs assuming the risk that its COL application may later be denied.

2.0 Request/Action

The proposed action, as described in STPNOC's request for an exemption to 10 CFR 50.10, would allow STPNOC to install two CFRWs (one for Unit 3 and one for Unit 4), prior to issuance of COLs. According to STPNOC, the CFRWs are non-safety related, and have no adverse interactions with any structures, systems, or components as identified in 50.10. STPNOC states that the CFRWs are required to facilitate excavation activities by retaining soil next to the excavations of the Reactor Building, Control Building and Turbine Building Foundations, while allowing the crane areas to be at grade and near the buildings. Installation of the CFRWs would include the following activities:

- Performing a full-depth and width-slurry excavation;
- Placing of reinforcement in the slurry trench;
- Displacing the slurry with concrete from the bottom up; and
- Installing tiebacks and whalers to stabilize the CFRWs, as excavation for permanent plant structures proceeds.

As construction of the permanent plant structures proceeds, the CFRWs would be abandoned in place following crane use. After abandonment, the CFRWs would have no function during operation of STP Units 3 and 4.

In its exemption request, STPNOC stated that the proposed exemption is needed because installation of the CFRWs must occur before excavation for permanent plant structures, and compliance with the requirements for a limited work authorization as indicated in 10 CFR 50.10 would result in undue hardship or other costs that are significantly in excess of those contemplated during the development of 10 CFR 50.10. According to the exemption request, installation of the CFRWs is needed to allow STPNOC to complete certain on-site activities in parallel with the licensing process, so that it can begin construction promptly upon issuance of COLs.

3.0 Discussion

Pursuant to 10 CFR 50.12(a) the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR 50.10 when (1) the exemption authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption would authorize the applicant to install two CFRWs (one for Unit 3 and one for Unit 4) prior to issuance of COLs. As stated above, 10 CFR 50.12(a) allows the NRC to grant exemptions from the requirements of 10 CFR 50.10. The NRC staff has determined that granting of the applicant's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.10 is to define clearly the licensing requirements for a limited work authorization (LWA). In determining that the proposed exemption would not pose an undue risk to public health and safety and that the applicant could be exempted from the LWA, for the limited purpose of the installation of the CFRWs, the NRC staff evaluated the exemption in the areas of Geotechnical Engineering, Structural Engineering and Hydrology.

Geotechnical Engineering

The NRC staff evaluated STPNOC's exemption request using the criteria in NUREG–0800, Standard Review Plan (SRP), Chapter 2.5.4, "Stability of Subsurface Materials and Foundations".

The specific criteria that apply include:

1. RG 1.132, "Site Investigations for Foundations of Nuclear Power Plants."
2. RG 1.138 "Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants."

In this exemption request, the applicant addressed the above criteria. The applicant evaluated the static and dynamic effects the CFRWs could have on safety-related structures, systems, or components (SSC's) identified by 10 CFR 50.10(a)(1)(i) through (vii). These SSCs included: (1) Reactor Building, (2) Control Building, (3) Ultimate Heat Sink and Reactor Service Water Pump House, (4) Turbine Building, (4) Service Building, (5) Diesel Generator Fuel Oil Storage Vault and Tunnel, (6) Reactor Service Water Piping Tunnel, and (7) Fire Protection Pump House. This evaluation included soil-structure interaction (SSI) analysis for SSCs. In addition, the applicant's stability evaluation included a static a dynamic bearing capacity and settlement analysis. The applicant concluded that the construction of the CFRWs has no adverse influence on the static and dynamic stability of any of the SSCs listed above.

The staff evaluated the applicant's static and seismic stability analysis of the SSCs identified in 10 CFR 50.10(a)(1). Specifically, the staff evaluated the applicant's SSI analysis as well as the settlement, bearing capacity and dynamic lateral earth pressure effects the CFRWs could have on the aforementioned SSCs. The staff's detailed evaluation is provided below.

Dynamic Lateral Earth Pressures

The staff reviewed the soil properties, presented in Revision 3 of the Final Safety Analysis Report (FSAR) Appendix 3H, Table 3H6.2, used as input for the SSI analysis. The applicant assumed a mean, upper and lower bound for the shear and compression wave velocities, and a constant value for unit weight. Poisson's ratio is assumed to vary above and below the water table. The accuracy of these assumed values will be verified in future testing, but the NRC staff concludes that because of the significant margin in the computed lateral earth pressures shown in Figure 2.5 of the attachment, Appendix A, "Crane Foundation Retaining Wall Evaluation Summary", the staff has reasonable assurance that variations in the soil properties of soil backfill properly compacted to 95 percent modified Proctor would not be significant enough to cause exceedence of the lateral pressures assumed in the design of the wall. Hence, the staff concludes that, the resulting static and dynamic earth pressures will be bounded by the lateral earth pressures used in design.

Bearing Capacity

The applicant stated that the presence of the wall will not affect the static bearing capacity. The staff concludes that the presence of the CFRWs and the retained natural ground behind the wall will provide additional resistance to a bearing capacity failure in the direction of the wall due to the surcharge provided by the natural ground behind the wall, and the strength of the reinforced concrete wall. The applicant stated that dynamic bearing capacity is not affected by the presence of the wall once the backfill is in place, and the staff concurs with this assessment.

Settlement

The applicant considers the settlement due to the wall and retained natural soils to be insignificant. The staff concludes that the weight of the wall versus the weight of the natural soil that it is replacing is minor and the stresses induced by the additional weight of the wall and any additional downward force caused by the battered anchors is minor due to the 3 foot width of the footing. Stresses induced by the linear wall footing can be ignored for the following reasons: (1) The foundations soils below the wall are over-consolidated and any settlement will occur rapidly, prior to the construction of adjacent structures, and (2) the additional vertical stresses due to the 3 ft. wide footing would contribute insignificant additional stress within the zone of influence created by structures placed in close proximity to the wall. Regarding the change in the pattern of stress distribution on the East side of the Reactor Building due to the presence of the wall, the applicant stated that those stresses would be increased, but the settlement due to those increased stresses would be offset by the reduction in stress due to backfill placement above the foundation level due to friction between the wall and the backfill. The staff believes that the presence of the wall will also minimize heave during excavation, and that will therefore reduce the magnitude of re-settlement upon reloading. Additional settlement that may be caused by additional loading due to the pattern of stress distribution on the east side of the Reactor Building due to the presence of the wall will be offset by reduced vertical stresses as indicated by the applicant, and also due to reduced re-settlement that results from less heave because of the presence of the wall. The staff therefore concludes that settlement caused by the presence of the wall is not significant.

Structural Engineering

In 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 2 requires that the design basis shall reflect appropriate considerations of the most severe earthquakes that have been historically reported for a site and the surrounding area. 10 CFR Part 50, Appendix S further delineates the earthquake engineering criteria for seismic evaluation of nuclear power plants. Pursuant to Appendix S, the evaluation of SSCs required to withstand the effects of the safe-shutdown earthquake (SSE) ground motion must take into account soil-structure interaction (SSI) effects. Using the guidance of SRP Section 3.7.2 in part, the NRC staff performed a review of the applicant's exemption request to ensure that leaving the CFRWs in place after the plant is constructed does not adversely affect the seismic design basis of safety related structures required to withstand effects of the SSE in the vicinity of the CFRWs.

In this exemption request, the applicant has addressed the above regulations as to the potential effect of the CFRWs on seismic response of the applicable SSCs. The applicant evaluated the potential dynamic effects of the CFRWs on SSC's, which are identified by 10 CFR 50.10(a)(1)(i) through (vii). These SSCs included: (1) Reactor Building, (2) Control Building, (3) Ultimate Heat Sink and Reactor Service Water Pump House, (4) Turbine Building, (4) Service Building, (5) Diesel Generator Fuel Oil Storage Vault and Tunnel, (6) Reactor Service water Piping Tunnel, and (7) Fire Protection Pump House. The CFRWs occupies a very small volume relative to the overall soil mass and represents a small increase in overall weight as compared to the replaced soil. As such, the applicant stated that the CFRWs are expected to have negligible interaction on the other nearby heavy structures such as Reactor Building (RB) or Control Building (CB).

In order to demonstrate that there is no adverse seismic interaction of the CFRWs on SSCs, the applicant performed a SSI analysis of the Reactor and Control Buildings for the STP Units 3 and 4 site-specific conditions, including site-specific SSE and the soil parameters described in Revision 3 of the STP Units 3 and 4 Combined License Final Safety Analysis Report (FSAR) Section 3.7.1 and Appendices 3A and 3C, except that a 2D model was used instead of a 3D model. The SSI analyses were performed with and without the CFRWs using the computer program SASSI2000 as described in FSAR Appendix 3C.8. Based on the analyses results and an assessment of the configuration and locations of the SSCs (listed above) as compared to the location of the CFRWs, the applicant concluded that the construction of the CFRWs has no adverse interactions with SSC's listed above.

The staff evaluated the applicant's SSI analysis of the Reactor and Control Buildings with and without the CFRWs as well as the applicant's engineering evaluation for the other SSCs for any potential effects of the CFRWs on SSCs. The staff based its review on the applicable regulations and SRP guidance for SSI analysis as well as the following engineering principles: (1) Much lighter CFRWs will not significantly affect the dynamic response of nearby massive buildings (such as RB, CB, TB, *etc.*), (b) the influence of a heavy structure on the SSE input of the other nearby lighter structure exceeds any influence from much lighter CFRWs, and (c) CFRWs will not influence the dynamic response of heavy or light structures located at a significant distance away from the CFRWs. The seismic input response spectrum used in the RB and CB SSI analysis envelops the site specific Foundation Input Response Spectra (FIRS). The input response spectrum also envelops a broad band spectrum anchored at 0.1g in the horizontal direction as required by Appendix S to 10 CFR Part 50, "Earthquake Engineering Criteria for Nuclear Power Plants." In addition, the staff verified consistency of the analytical model and the site soil parameters used in the exemption request and the COL application. The staff's detailed evaluation is provided below.

Reactor Building and Control Building

The RB and CB are part of the Advanced Boiling Water Reactor (ABWR) design certification. The CFRWs are located approximately 15 feet from the exterior wall of the RB and about 80 feet from the exterior wall of the CB. The applicant performed 2–D SSI analyses of the RB and CB, with and without the CFRWs, to assess the potential impact of the crane wall installation on the seismic response of the RB and CB for the site-specific conditions, including site-specific SSE and soil properties. The staff needed more information about the analytical models to conclude that impact of the seismic interaction of CFRWs has been appropriately accounted for in SSI analysis of RB and CB. The staff, in a request for additional information (RAI 1) dated May 24, 2010 (ADAMS Accession Number ML101400240), asked the applicant to provide this needed information.

In response to the staff's request for additional information, RAI 1, the applicant stated that there were some inconsistencies in the mass and stiffness properties of the 2–D SSI analytical models used in the analysis described in the response to the RAI 03.07.01–24 (U7–C–STP–NRC–100083) and the original exemption request of March 23, 2010. However, the conclusions of these analyses remain the same. In the revised exemption request of July 21, 2010 (U7–C–STP–NRC–100147), the applicant described the updated analytical models used in the reanalysis. The results including the dynamic lateral soil pressure obtained from the SSI analysis for the RB and CB, with and without CFRWs for the mean in-situ soil parameters are reported in Appendices A and B of the exemption request (U7–C–STP–NRC–100143) which concluded that CFRWs does not have significant effect on the response of the RB and CB.

The staff reviewed the analytical model and comparative analysis results with and without the CFRWs as described in Appendix A and B of the exemption request of July 21, 2010. The comparison of in-structure response spectra (ISRS) is provided in Figures 2.1 through 2.4 for the RB and in Figures 2.6 through 2.7 for the CB. For the RB, the ISRS with and without the CFRWs were compared at four locations: Bottom of base mat, reactor pressure vessel/main steam nozzle, top of the reinforced concrete containment vessel, and top of the RB. For the CB, the ISRS with and without the CFRWs were compared at the top of the base mat and the top of the CB. Tables 2.1 and 2.2 of the July 21, 2010 exemption request compare the maximum forces and moments at the above four for the RB and two locations for the CB, respectively, for the RB and CB with and without the CFRWs. These comparisons demonstrate that the CFRWs do not have a significant effect on the seismic response, ISRS, and maximum forces for the RB and the CB. This determination is also consistent with the expectation that lighter nearby structures like the CFRWs will have a minimal influence on the seismic response of nearby heavy structures like RB, CB, and TB.

While the inertia of the CFRWs are not expected to affect the seismic response of the nearby heavy structures, the stiff CFRWs can act as a barrier to reflect the seismic waves and could affect seismic lateral soil pressure on the adjacent building walls. The applicant addressed this issue by comparing the lateral soil pressures on the RB and CB walls obtained from the site-specific SSI analysis, with and without the CFRWs as shown in Figures 2.5 and 2.8. As expected, the lateral seismic soil pressure increased due to the presence of the CFRWs. However, the increase was not significant enough to affect the design pressures for the RB and CB walls. The RB and CB exterior walls are designed for the larger of: (1) the pressure provided in the ABWR Design Control Document (DCD) Tier 2 Figure 3H.1–11 and (2) the pressure obtained from the alternate modified Ostadan method described in the COLA Part 2, Tier 2, Section 2.5S.4.10.5.2. Therefore, the staff agrees with the applicant's conclusion that the increase in soil pressure due to the presence of CFRWs will be bounded by the design seismic soil pressure.

Ultimate Heat Sink and Reactor Service Water Pump House

The Ultimate Heat Sink (UHS) and Reactor Service Water Pump House (RSWPH) are large Category I structures. Its smallest separation distance from the CFRWs is 60 feet. Based upon the

results of the RB and CB SSI analysis, the applicant stated that the CFRWs do not have a significant effect on the response of the UHS and RSWPH. The staff reviewed the configuration of the UHS and RSWPH as well as the STP Units 3 & 4 site layout in reference to the CFRWs. Staff noted that these structures are massive and are not located in close proximity of the CFRWs. Therefore, based on the review of these structures, their locations in relation to the CFRWs, and the comparative SSI analysis performed in support of the RB and CB, the staff agrees with the applicant's conclusion that CFRWs do not have a significant effect on the seismic design of the UHS and RSWPH.

Turbine Building

The Turbine Building (TB) is a large structure. The CFRWs are installed approximately 15 feet from the exterior wall of the TB. The applicant stated that because CFRWs are a much smaller structure, its influence on the seismic response of large TB is expected to be insignificant. The staff reviewed the configuration of the TB as well as their site layout in reference to the CFRWs. The staff noted that similarly to the RB, the TB is also a heavy structure as compared to the CFRWs. Therefore, the staff concludes that the installation of CFRWs does not have a significant effect on the seismic response of the TB.

Service Building

The Service Building (SB) is a non-Seismic Category I structure designed for the SSE, and meets the Seismic Category II/I interaction requirements. The horizontal separation distance of the SB from the CFRWs is approximately 15 feet. The SSE input for the II/I evaluation is determined based on the influence of the CB (which is a heavy structure near the SB) on the lighter nearby SB structure. The influence of the CB on the SSE input and design of the SB far exceeds any influence from the much lighter CFRWs structure.

The applicant stated that the influence of the nearby heavier CB structure is considered for determining the SSE input for the SB. Based on the configuration of the CB and the CFRWs, the staff agrees with the applicant that influence of the nearby CB on the SSE input and design of the SB will be much more significant than any influence on the seismic response of the SB from the much lighter CFRWs.

Diesel Generator Fuel Oil Storage Vault and Tunnel

The applicant stated that the Diesel Generator Fuel Oil Storage Vault and Tunnel are designed for the SSE input considering the influence of a heavy structure (*i.e.,* RB) on the lighter nearby structures (Diesel Generator Fuel Oil Storage Vault and Tunnel). The influence of the RB on the SSE input and design of the Diesel generator Fuel Oil Storage Vault and Tunnel far exceeds any influence from much lighter CFRWs. As such, the applicant stated that the presence of the CFRWs has no influence on the design of the Diesel Generator Fuel Oil Storage Vault and Tunnel.

The design calls for three Diesel Generator Fuel Oil Storage Vaults and the associated tunnels per unit surrounded by the RB and RSWPH. Based on the configuration of the RB, RSWPH, and the CFRWs, the staff agrees with the applicant that influence of the nearby massive RB on the SSE input and design of the Diesel Generator Fuel Oil Storage Vault and Tunnel will be much more significant than any influence from the much lighter CFRWs.

Reactor Service Water Piping Tunnel

The applicant stated that the *Reactor Service Water* (RSW) Piping Tunnel is located more than 250 feet away from the CFRWs. At this location, the applicant stated that the CFRWs have no effect on the RSW Piping Tunnel.

The staff reviewed the site layout of the RSW Piping Tunnel and determined that there will be no seismic interaction from the CFRWs to influence the seismic input to RSW Piping Tunnel.

Fire Protection Pump House

The Fire Protection Pump House is located more than 300 feet away from the CFRWs. At this location, the applicant stated that the CFRWs have no effect on the Fire Protection Pump House. Because of sufficient separation distance (more than 300 feet), the staff agrees with the applicant's conclusion that the seismic input for the Fire Protection Pump House is not affected by the CFRWs.

The staff concludes that leaving the CFRWs in place after the plant is constructed does not adversely affect the seismic design basis of safety related structures required to withstand the effects of the SSE in the vicinity of the CFRWs. This conclusion is based on the analysis and engineering evaluation performed by the applicant and the review performed by the staff as discussed in this report on the above SSCs as defined in 10 CFR 50.10(a)(1).

The staff also concludes that applicant has met the relevant requirements of GDC 2 and 10 CFR Part 50, Appendix S by appropriately considering the most severe earthquake and site parameters as seismic input in performing the comparative SSI analysis with and without the CFRWs.

Hydrology

STPNOC stated that the CFRWs will not affect the safe operation of STP Units 3 and 4 or have a reasonable nexus to safety. NRC staff reviewed the impacts of proposed action on safety-related groundwater issues as they relate to the SSCs as defined in 10 CFR 50.10 (a)(1).

First, in regard to groundwater use, the STPNOC COLA proposed a Deep Aquifer well to provide make up water for the Ultimate Heat Sink (UHS). However, the make-up water for the UHS is not safety-related and thus there are no safety-related impacts.

Second, ABWR DC requires a maximum groundwater level of two feet below the plant grade. The applicant stated in FSAR 2.4.12 that the estimated maximum groundwater level is about 28 feet Mean Sea Level (MSL). STPNOC is now re-evaluating the maximum groundwater level using a detailed groundwater model. However, NRC staff expects that the maximum groundwater level with the CFRWs will remain significantly below the plant grade of 34 ft MSL.

Third, in terms of the groundwater contamination, STPNOC is now re-evaluating the impacts of CFRWs on the groundwater pathways. However, NRC staff expects that the CFRWs will create a longer pathway and travel time that will result in less severe radiological consequences.

Finally, the CFRWs will not have an adverse impact on the safety-related groundwater issues at STP Units 1 and 2 because there is a sufficient separation distance between the proposed and existing units.

The staff concludes that the installation of the CFRWs for Units 3 and 4 will not affect the safe operation of STP Units 3 and 4 or have a reasonable nexus to safety related to groundwater at the STP site.

Consistent With Common Defense and Security

The proposed exemption would allow the applicant to install CFRWs as a preconstruction activity without the authorization provided in a construction permit, combined license or a Limited Work Authorization (LWA). This exemption from 10 CFR 50.10 is for the sole purpose of the installation the

CFRWs and has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii) is present whenever "compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation as adopted, or that are significantly in excess of those incurred by others similarly situated." The underlying purpose of 10 CFR 50.10 is to define clearly the licensing requirements for a LWA. The applicant has demonstrated and the NRC staff has confirmed that the influence of the CFRWs on interactions with the SSCs will have a negligible nexus to safety. The applicant also cites undue hardship or other costs as a special circumstance that would warrant granting this exemption. The applicant has provided two potentially viable alternate construction plans to avoid delay in their schedule: (1) Redesign the CFRWs to make it more practical to remove prior to fuel load and (2) increase the size of the excavation and locate the crane in the excavation. STPNOC states that both options will increase the construction cost by $22 million and $260 million respectively. Therefore, since the underlying purpose of 10 CFR 50.10 is still being achieved concerning the safety of the SSCs during construction activities and the applicant has demonstrated an undue hardship, the special circumstance required by 10 CFR 50.12(a)(2)(iii) for the granting of an exemption from 10 CFR 50.10 exists.

The applicant has also provided information on this proposed action pursuant to 10 CFR 50.12(b) which states any person may request an exemption permitting the conduct of activities prior to the issuance of the construction permit prohibited by 10 CFR 50.10. The balancing factors for granting such an exemption are evaluated in the environmental assessment (EA) that is attached to this package. The ADAMS Accession number for this associated EA is ML101580541.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a) and 10 CFR 50.12(b), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants South Texas Project Nuclear Operating Company an exemption from the requirements in 10 CFR 50.10 for the installation of the CFRWs for Units 3 and 4.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 67784).

This exemption is effective upon issuance.

Dated at Rockville, Maryland on November 5, 2010.

For the Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–28638 Filed 11–12–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice to extend comment period for a new system of records.

SUMMARY: OPM is extending the comment period for a new system of records, OPM/Central-15, Health Claims Data Warehouse, until December 15, 2010. The initial notice for this system was published on October 5, 2010, and provided a comment period deadline of November 15, 2010. Based on the comments we have received since we published the initial notice, OPM is considering revisions to the systems notice to, among other things, provide greater specificity regarding the authorities for maintaining the system, clarify its intent to significantly limit the circumstances under which personally identifiable records may be released, and provide a more detailed explanation of how the records in this system will be protected and secured. If OPM publishes a revised systems notice, the public will have the opportunity to comment on the revised notice before OPM begins operating the system. In the meantime, OPM is extending the opportunity for interested persons, organizations, and agencies to review and provide comments pursuant to the October 5, 2010 system notice.

DATES: The comment period is extended until December 15, 2010.

ADDRESSES: Send written comments to the Office of Personnel Management, *Attn:* Gary A. Lukowski, Ph.D., Manager, Data Analysis, U. S. Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415 or to *gary.lukowski@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary A. Lukowski, Ph.D., Manager, Data Analysis, at 202–606–1449.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–28834 Filed 11–12–10; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–28 and CP2011–28 Through 32; Order No. 582]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add five additional Global Expedited Package Services 3 (GEPS 3) contracts to the competitive product list. This document describes the Postal Service's filing, including its interest in and rationale for including the contracts within the existing GEPS 3 product, and addresses several related procedural matters. These include an opportunity for public comment.

DATES: *Comment deadline:* November 16, 2010.

ADDRESSES: Submit comments electronically using the Commission's Filing Online system at *http.www.prc.gov*. Those who cannot submit comments electronically should call the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On November 5, 2010, the Postal Service filed a notice announcing that it has entered into five additional Global Expedited package Services 3 (GEPS 3) contracts.[1] The Postal Service believes

[1] Notice of United States Postal Service of Filing Five Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application For Non-Public Treatment of Materials Filed Under Seal, November 5, 2010 (Notice).

the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A through 1E—redacted copies of the five contracts and applicable annexes;
- Attachments 2A through 2E—certified statements required by 39 CFR 3015.5(c)(2) for each contract;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non–public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for the GEPS 3 product. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contracts' functional equivalency. *Id.* at 3–4. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these five GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.* at 4.

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2011–28 through CP2011–32 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than November 16, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2011–28 through CP2011–32 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than November 16, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these dockets.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–28584 Filed 11–12–10; 8:45 am]

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[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request approval of a new information collection, consisting of proposed RRB Form G–252, Self-Employment/Corporate Officer Work and Earnings Monitoring. Our ICR describes the information we seek to collect from the public. Completion is required to obtain or retain benefits. One response is required of each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 16876 on April 2, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Self-Employment/Corporate Officer Work and Earnings Monitoring.

OMB Control Number: 3220–XXXX.

Form(s) submitted: G–252.

Type of request: New information collection.

Affected public: Individuals or households.

Abstract: To determine entitlement or continued entitlement to a disability annuity, the RRB will obtain information from disability annuitants who claim to be self-employed or a corporate officer or who the RRB determines to be self-employed or a corporate officer after a continuing disability review.

Changes Proposed: N.A.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 100.

Total annual responses: 100.

Total annual reporting hours: 33.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–28600 Filed 11–12–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Edentify, Inc., Embryo Development Corp., Enclaves Group, Inc., Energytec, Inc., Enesco Group, Inc., Entertainment Is Us, Inc., Entrada Networks, Inc., Entropin, Inc., Epic Financial Corp., Epicus Communications Group, Inc., Epixtar Corp., Equisure, Inc., Equus Gaming Co., and Evans, Inc. (n/k/a Fur Company A), Order of Suspension of Trading

November 10, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Edentify, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Embryo Development Corp. because it has not filed any periodic reports since the period ended July 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enclaves Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Energytec, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enesco Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Entertainment Is Us, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Entrada Networks, Inc. because it has not filed any periodic reports since the period ended April 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Entropin, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Epic Financial Corp. because it has not filed any periodic reports since the period ended July 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Epicus Communications Group, Inc. because it has not filed any periodic reports since the period ended November 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Epixtar Corp. because it has not filed any periodic reports since the period ended June 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Equisure, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Equus Gaming Co. because it has not filed any periodic reports since the fiscal year ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Evans, Inc. (n/k/a Fur Company A) because it has not filed any periodic reports since the period ended November 28, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 10, 2010, through 11:59 p.m. EST on November 23, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–28775 Filed 11–10–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63276; File No. SR–NASDAQ–2010–138]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Program for Managed Data Solutions

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, 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to establish a program for Managed Data Solutions.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].[3]

* * * * *

7026. *Distribution Models* [Reserved]

(a) Reserved

(b) Managed Data Solutions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

The charges to be paid by Distributors and Subscribers of Managed Data Solutions products containing Nasdaq Depth data shall be:

Fee schedule for Managed Data Solutions	*Price*
Managed Data Solution	*$1,500/mo Per Distributor.*
Administration Fee (for the right to offer Managed Data Solutions to client organizations).	
Nasdaq Depth Data	*$300/mo Per Subscriber.*
Professional Subscriber Fee (Internal Use Only and includes TotalView, Level 2, OpenView).	
Nasdaq Depth Data	*$60/mo Per Subscriber.*
Non-Professional Subscriber (Internal Use Only and includes TotalView, Level 2, OpenView).	

(d) Reserved

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to create a new data distribution model (a Managed Data Feed Solution) to further the distribution of Nasdaq TotalView, Nasdaq OpenView and/or Nasdaq Level 2 Information (collectively, "Nasdaq Depth Information"). It offers a new delivery method available to firms seeking simplified market data administration. The Managed Data Solution may be offered by Distributors to clients and/or client organizations that are using the Nasdaq Depth Information internally. This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology use [sic] to distribute market data. Distributors offering Managed Data Solutions continue to be fee liable for the applicable distributor fees for the receipt and distribution of the Nasdaq Depth Information.

A Managed Data Solution is a delivery option that will assess a new, innovative fee schedule to Distributors of Nasdaq Depth Information that provide data feed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with only limited entitlement controls (*e.g.,* usernames and/or passwords) ("Managed Data Recipients"). However, the Distributor must first agree to reformat, redisplay and/or alter the Nasdaq Depth Information prior to retransmission, but not to affect the integrity of the Nasdaq Depth Information and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. A Managed Data Solution is any retransmission data product containing Nasdaq Depth Information offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients under a Managed Data Solution. The recipient of a Managed Data Solution may use the information for internal purposes only and may not distribute the information outside of their [sic] organization.

In the past, Nasdaq has considered this type of retransmission to be an uncontrolled data product if the Distributor does not control both the entitlements and the display of the information. Over the last ten years, Distributors have improved the technical delivery and monitoring of data and the Managed Data Solution offering responds to an industry need to administer these new types of technical deliveries.

Currently, Nasdaq charges Managed Data Recipients who receive a Managed Data Solution the same distributor fees as a recipient of an uncontrolled data product. Some Distributors believe that the Managed Data Solution is a better controlled data product and as such should not be subject to the same rates as a data feed. However, the Distributors may only have contractual control over the data and may not be able to verify how Managed Data Recipients are actually using the data at least without involvement of the Managed Data Recipient. Some Distributors have even held-off on deployment of new Nasdaq product offerings, pending the resolution to this matter. Thus, offering a Managed Data Solution fee schedule would not only result in Nasdaq offering lower fees for existing Managed Data Recipients utilizing a Managed Data Solution, but will allow new Distributors to deliver Managed Data Solutions to new clients, thereby increasing transparency of the market.

Nasdaq proposes to establish a program to offer the Managed Data Solution to Distributors that assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing "unnecessary regulatory restrictions" on the ability of exchanges

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

Nasdaq believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a "due, fee or other charge imposed by the self-regulatory organization," the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. Nasdaq believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (DC Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'" *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. For the reasons discussed above, Nasdaq believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, Nasdaq believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end

users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. Nasdaq believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on Nasdaq consumed NQDS and 80 of the top 100 broker-dealers consumed TotalView. During that month, the NQDS-users were responsible for 94.44% of the orders entered into Nasdaq and TotalView users were responsible for 92.98%.

Competition among platforms has driven Nasdaq continually to improve its platform data offerings and to cater to customers' data needs. For example, Nasdaq has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. Nasdaq offers front end applications such as its "Bookviewer" to help customers utilize data. Nasdaq has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows Nasdaq to better fit customer needs. Nasdaq offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Nasdaq has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. Nasdaq has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, Nasdaq's fees for market data have remained flat. In fact, as a percent of total customer costs, Nasdaq data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to Nasdaq's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. Nasdaq continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with Nasdaq or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

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.[7] 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–2010–138 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–2010–138. This

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2010–138, and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28548 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63274; File No. SR–NYSEAmex–2010–101]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Options Fee Schedule To Reflect Fees Charged for Co-location Services

November 8, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 26, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Fee Schedule to reflect fees charged for co-location services, as described more fully herein. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov*, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Options Fee Schedule to identify fees pertaining to co-location services, which allow Users[4] of the Exchange to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.[5] The Exchange plans to offer these co-location services beginning in January 2011 at its data center in Mahwah New Jersey.[6] The Exchange will offer space at the data center in cabinets with power usage capability of either four or eight kilowatts (kW).[7] In addition, the Exchange will offer Users services related to co-location, including cross connections, equipment and cable installation, and remote "hot-hands" services.

Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from or superior to that of Users that do not receive co-location services. All orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway regardless of whether the sender is co-located in the Exchange's data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users. However, Users that receive co-location services normally would expect reduced latencies in sending orders to the Exchange and receiving market data from the Exchange. In addition, co-located Users have the option of obtaining access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center.[8] Co-located Users have the option of using either the LCN or the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, to which all Users have access. Because it operates as a local area network within the data center, the LCN provides reduced latencies in comparison with SFTI. Other than the

[4] For the purposes of this filing, the term "Users" includes any "ATP Holder," as that term is defined in NYSE Amex (Options) Rule 900.2NY(4) and any "Sponsored Participant," as that term is defined in NYSE Amex (Options) Rule 900.2NY(77).

[5] The Commission has approved proposed rule filings submitted by the Exchange (with respect to its equities business) and the Exchange's affiliate, the New York Stock Exchange LLC to offer the same co-location services from the Mahwah data center at the same prices. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSE–2010–56); Securities Exchange Act Release No. 62960 (September 21, 2010) 75 FR 59310 (September 27, 2010) (SR–NYSEAmex–2010–80).

[6] The Exchange will announce the effective date of the fees set forth in this proposed rule change through a notice to Users.

[7] The Exchange also allows Users, for a monthly fee (i.e., 40% of the applicable monthly per kW fee), to obtain an option for future use on available, unused cabinet space in proximity to their existing cabinet space. Specifically, Users may reserve cabinet space of up to 30% of the cabinet space under contract, which the Exchange will endeavor to provide as close as reasonably possible to the User's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. (If the 30% measurement results in a fractional cabinet, the cabinet count is adjusted up to the next increment.) If reserved cabinet space becomes needed for use, the reserving User will have 30 business days to formally contract with the Exchange for full payment for the reserved cabinet space needed or the space will be reassigned.

[8] As set forth below, pricing for LCN access is provided on a stand-alone basis and on a bundled basis in combination with SFTI connections and optic connections to outside access centers and within the data center. The SFTI and optic connections are not related to the co-location services.

reduced latencies, the Exchange believes that there are no material differences in terms of access to the Exchange between Users that choose to co-locate and those that do not. SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products. User access to non-proprietary market data products is available through SFTI and not through LCN.

The Exchange offers co-location space based on availability and the Exchange believes that it has sufficient space in the Mahwah data center to accommodate current demand on an equitable basis for the foreseeable future. In addition, the Exchange believes that any difference among the positions of the cabinets within the data center does not create any material difference to co-location Users in terms of access to the Exchange.

The following charts identify the proposed tiered fees for co-location and the proposed fees for related services.

Initial fee per cabinet	$5,000
Number of kWs	Per kW fee monthly
4–8	$1,200
12–20	1,050
24–40	950
44 +	900

Type of service	Description	Amount of charge
LCN Access	1 GB Circuit	$6,000 per connection initial charge plus $5,000 monthly per connection.
LCN Access	10 GB Circuit	$10,000 per connection.
Bundled Network Access, Option 1 (2 LCN connections, 2 SFTI connections, and 2 optic connections to outside access center).	1 GB Bundle	$25,000 initial charge plus $13,000 monthly charge.
	10 GB Bundle	$50,000 initial charge plus $47,000 monthly charge.
Bundled Network Access, Option 2 (2 LCN connections, 2 SFTI connections, 1 optic connection to outside access center, and 1 optic connection in data center).	1 GB Bundle	$26,000 initial charge plus $16,000 monthly charge.
	10 GB Bundle	$50,000 initial charge plus $54,250 monthly charge.
Bundled Network Access, Option 3 (2 LCN Connections, 2 SFTI connections, and 2 optic connections in data center).	1 GB Bundle	$27,500 initial charge plus $19,000 monthly charge.
	10 GB Bundle	$50,000 initial charge plus $61,500 monthly charge.
Data Center Fiber Cross Connect	Cross connect between a single User's cabinets within the data center.	$500 per unit initial charge plus $500 monthly per unit.
Initial Install Services (Required per cabinet)	Includes initial racking of equipment in cabinet and provision of up to 10 cables (4 hrs).	$800 per cabinet.
Hot Hands Service: Normal Business Hours, Scheduled (Note: Hot Hands Service allows Users to use on-site data center personnel to maintain User equipment.).	Applies on non-NYSE Amex holidays, Monday to Friday, 9 am to 5 pm if scheduled at least 1 day in advance.	$200 per hour.
Hot Hands Service: Extended Business Hours, Scheduled.	Applies Monday to Friday 5 pm to 9 am, NYSE Amex holidays, and weekends if scheduled at least 1 day in advance.	$275 per hour.
Hot Hands Service: Normal Business Hours, Expedited.	Applies on non-NYSE Amex holidays, Monday to Friday, 9 am to 5 pm if NOT scheduled at least 1 day in advance.	$250 per hour.
Hot Hands Service: Extended Business Hours, Expedited.	Applies Monday to Friday 5 pm to 9 am, NYSE Amex holidays, and weekends if NOT scheduled at least 1 day in advance.	$325 per hour.
Rack and Stack	Installation of one server in User's cabinet. Service encompasses handling, unpacking, tagging, and installation of the server as well as 1 network connection within the User rack.	$200 per server.
Power Recycling	Reboot of power on one server or switch as well as observing and reporting on the status of the reboot back to the User.	$50 per reset.
Shipping and Receiving	Receipt of one shipment of goods at data center from User/supplier. Includes coordination of shipping and receiving.	$100 per shipment.
Badge Request	Request for provision of a permanent data center site access badge for a User representative.	$50 per badge.
External Cabinet Cable Tray	Engineer, furnish and install Rittal 5″ H X 12″ W cable tray on cabinet.	$400 per tray.
Custom External Cabinet Cable Tray	Engineer, furnish and install 4″ H V 24″ W custom basket cable tray above client's cabinet rows.	$100 per linear foot.
Install and Document Cable	Labor charges to install and document the fitting of a cable(s) in a User's cabinet(s) in excess of the 10 copper cables included in the cabinet installation fee.	$200 per hour.

Type of service	Description	Amount of charge
Equipment Maintenance Call Escalation	Hardware maintenance-break fix services available through NYSE arrangement with Delta Computer Group.	$100 per call.
Visitor Security Escort	NYSE employee escort, which is required during User visits to the data center. (Note: all User representatives are required to have a visitor security escort during visits to the data center, including User representatives who have a permanent data center site access badge.).	$75 per hour.
Technician Support Service—Non Emergency	Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Prior day notice is required.	$200 per hour.
Technician Support Service—Emergency	Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Two hour notice is required.	$325 per hour.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[9] in general, and Sections 6(b)(4) and 6(b)(5), of the Act,[10] in particular, in that it is designed to (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and (ii) prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply fees for comparable co-location services uniformly to our Users. Moreover, the Exchange believes that, as described herein, access to its market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the co-location fees sought to be codified here are based on filings by the Exchange and the Exchange's affiliate, the New York Stock Exchange LLC, which have already been approved by the Commission, and that accelerated approval of the co-location fees will ensure that the co-location services and fees are made available to all interested parties without delay. For this reason, the Commission designates the proposed rule change as operative upon filing.[13]

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–NYSEAmex–2010–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this five-day pre-filing requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–101 and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28607 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63277; File No. SR–FINRA–2010–058]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Effective Date of the Changes to the FINRA Trade Reporting and Order Audit Trail System Rules Approved in SR–FINRA–2010–043

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 November 5, 2010, 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 and II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to delay the effective date of the changes to the FINRA trade reporting and Order Audit Trail System ("OATS") rules as proposed in SR–FINRA–2010–043 and approved by the SEC on October 4, 2010.[5] The new effective date will be the new compliance date of the amendments to SEC Regulation SHO.

The proposed rule change would not make any changes to the text of FINRA rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (Order Approving File No. SR–FINRA–2010–043).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the SEC adopted changes to SEC Regulation SHO with a compliance date of November 10, 2010.[6] On November 4, 2010, the SEC delayed the compliance date of these amendments to SEC Regulation SHO until February 28, 2011.[7]

On August 6, 2010, FINRA filed a proposed rule change, including amendments to FINRA's trade reporting and OATS rules consistent with the amendments to SEC Regulation SHO (SR–FINRA–2010–043) (the "Short Exempt Filing"). The Short Exempt Filing was approved by the Commission on October 4, 2010 with an effective date of November 10, 2010. In light of the delay of the compliance date for the amendments to SEC Regulation SHO, FINRA is proposing to likewise delay the effective date of the FINRA amendments proposed in the Short Exempt Filing until the new compliance date of SEC Regulation SHO.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the new compliance date of SEC Regulation SHO.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] 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 delaying the effective date of the

[6] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

[7] *See* Securities Exchange Act Release No. 63247 (November 4, 2010).

[8] 15 U.S.C. 78*o*–3(b)(6).

amendments proposed in the Short Exempt Filing is appropriate in light of the delay of the compliance date of SEC Regulation SHO.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f)(1) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission 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–FINRA–2010–058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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–2010–058 and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28608 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63271; File No. SR–ISE–2010–107]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Options on Leveraged Exchange-Traded Notes and To Broaden the Definition of "Futures-Linked Securities"

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 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 502(k) to: (a) Permit trading options on leveraged (multiple or inverse) exchange-traded notes, and (b) broaden the definition of "Futures-Linked Securities." The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 502(k) to: (a) Permit trading options on leveraged (multiple or inverse) exchange-traded notes ("ETNs"), and (b) broaden the definition of "Futures-Linked Securities." ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

equity options apply to Index-Linked Securities.

Leveraged ETN Options

The Exchange proposes to amend Rule 502(k) to permit the listing of options on leveraged (multiple or inverse) ETNs. Multiple leveraged ETNs seek to provide investment results that correspond to a specified multiple of the percentage performance on a given day of a particular Reference Asset. Inverse leveraged ETNs seek to provide investment results that correspond to the inverse (opposite) of the percentage performance on a given day of a particular Reference Asset by a specified multiple. Multiple leveraged ETNs and inverse leveraged ETNs differ from traditional ETNs in that they do not merely correspond to the performance of a given Reference Asset, but rather attempt to match a multiple or inverse of a Reference Asset's performance.

The Barclays Long B Leveraged S&P 500 TR ETN ("BXUB"), the Barclays Long C Leveraged S&P 500 TR ETN ("BXUC") and the UBS AG 2x Monthly Leveraged Long Exchange Traded Access Securities ("E–TRACS") linked to the Alerian MLP Infrastructure Index due July 9, 2040 ("MLPL") currently trade on the NYSE Arca Stock Exchange and are examples of multiple leveraged ETNs. In addition, the Barclays ETN + Inverse S&P 500 VIX Short-Term Futures ETN ("XXV") currently trades on the NYSE Arca Stock Exchange and is an example of an inverse leveraged ETN. The NYSE Arca Stock Exchange also lists several other inverse leveraged ETNs for trading.[3]

Currently, ISE Rule 502(k) provides that securities deemed appropriate for options trading shall include shares or other securities ("Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities," and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities") that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");
- Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in ISE Rule 502(h), or a basket or index of any of the foregoing ("Currency Reference Asset");
- Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");
- Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) futures ("Futures Reference Asset"); and
- Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income References Assets, or Futures Reference Assets ("Multifactor Reference Asset").

For purposes of ISE Rule 502(k), Equity Reference Assets, Commodity Reference Asset, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets together with Multifactor Reference Assets, collectively are referred to as "Reference Assets."

In addition, Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Rule 502(b); or (ii) the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash, or cash equivalents, satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

The Exchange proposes to amend ISE Rule 502(k) to expand the type of Index-Linked Securities that may underlie options to include leveraged (multiple or inverse) ETNs. To affect this change, the Exchange proposes to amend ISE Rule 502(k) by adding the phrase, "or the leveraged (multiple or inverse) performance" to each of the subparagraphs ((i) through (vi)) in that section which set forth the different eligible Reference Assets.

The Exchange's current continuing listing standards for ETN options will continue to apply. Specifically, under ISE Rule 503(k), ETN options shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series or option contracts of the class covering such Securities whenever the underlying Securities are delisted and trading in the Securities is suspended on a national securities exchange, or the Securities are no longer an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934). In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities in any of the following circumstances: (1) The underlying Index-Linked Security fails to comply with the terms of ISE Rule 502(k); (2) in accordance with the terms of ISE Rules 503(a) and (b), in the case of options covering Index-Linked Securities when such options were approved pursuant to ISE Rule 502(k), except that, in the case of options covering Index-Linked Securities approved pursuant to ISE Rule 502(k)(3) that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are "NMS" stock as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to ISE Rule

[3] These ETNs include: The Barclays Short B Leveraged Inverse S&P 500 TR ETN ("BXDB"), the Barclays Short C Leveraged Inverse S&P 500 TR ETN ("BXDC") and the Barclays Short D Leveraged Inverse S&P 500 TR ETN ("BXDD").

502(k), the value of the Reference Asset is no longer calculated; or (4) such other event shall occur or condition exist that in the opinion of the Exchange make further dealing in such options on the Exchange inadvisable. Expanding the eligible types of ETNs for options trading under ISE Rule 502(k) will not have any effect on the rules pertaining to position and exercise limits [4] or margin.[5]

This proposal is necessary to enable the Exchange to list and trade options on shares of the BXUB, BXUC, XXV, BXDB, BXDC, BXDD and the MLPL. The Exchange believes the ability to trade options on leveraged (multiple or inverse) ETNs will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on ETNs is necessary to ensure that the Exchange will be able to list options on the above listed leveraged (multiple and inverse) ETNs as well as other leveraged (multiple and inverse) ETNs that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in leveraged (multiple and inverse) ETN options.

It is expected that The Options Clearing Corporation will seek to revise the Options Disclosure Document ("ODD") to accommodate the listing and trading of leveraged (multiple and inverse) ETN options.

Broaden the Definition of "Futures-Linked Securities"

The second change being proposed by this filing is to amend the definition of "Future [sic]-Linked Securities" set forth in ISE Rule 502(k)(1)(v). Currently, the definition of "Futures-Linked Securities" is limited to securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) Futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) futures.

ISE Rule 502 sets forth generic listing criteria for securities that may serve as underlyings for listed options trading. The Exchange believes that the current definition of "Futures-Linked Securities" is unnecessarily restrictive and requires the Exchange to submit a filing to amend the definition each time a new ETN is issued that tracks the performance of an index of futures/options on futures that is not enumerated in the existing rule. To address this issue, the Exchange is proposing to revise the definition of "Futures-Linked Securities" to provide that they are securities that for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts ("Futures Reference Asset"). The Exchange notes that all ETNs eligible for options trading must be principally traded on a national securities exchange and must be an "NMS Stock." As a result, the Exchange believes that broadening the definition of "Futures-Linked Securities" by no longer specifically listing the types of futures and options on futures contracts that may be tracked by an ETN is appropriate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [6] of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on leveraged (multiple or inverse) ETNs and implement the amended definition of "Futures-Linked Securities" immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] The Commission notes the proposal is substantively identical a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[11] For these reasons, the Commission designates the

[4] *See* ISE Rules 412, *Position Limits* and 414, *Exercise Limits*.

[5] *See* ISE Rules 1200–1204, the Exchange's rules governing margin.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 63202 (October 28, 2010), 75 FR 67794 (November 3, 2010) (SR–CBOE–2010–080).

proposed rule change as operative upon filing.

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–ISE–2010–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–ISE–2010–107.* 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.[12] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–ISE–2010–107* and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28686 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63272; File No. SR–NYSEArca–2010–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Arca Equities Rule 7.31(f) To Modify the Functionality of Tracking Orders

November 8, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 29, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(f) to modify the functionality of Tracking Orders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 amend NYSE Arca Equities Rule 7.31(f) to modify the functionality of Tracking Orders.

A Tracking Order is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process[4] against orders equal to or less than the aggregate size of Tracking Order interest available at that price. Presently, if a Tracking Order is executed but not exhausted, the remaining portion of the order is cancelled, without routing the order to another market center or market participant. An ETP Holder that wishes to maintain its Tracking Order on the Exchange after partial execution must re-enter another Tracking Order.

The Exchange proposes to modify the functionality of Tracking Orders to eliminate the current cancellation feature. Specifically, the Exchange proposes that, upon partial execution of a Tracking Order, the Tracking Order would not be cancelled, but rather the remaining portion of the order would repost in the Tracking Order Process with a new time priority. The reposted Tracking Order would remain available for execution within the Tracking Order Process until either the total posted size is exhausted or the Tracking Order is

[4] *See* NYSE Arca Equities Rule 7.37 (Order Execution). The Tracking Order Process is available during Core Trading Hours only, during which orders may be matched and executed in the Tracking Order Process as follows: If an order has not been executed in its entirety pursuant to the Directed Order, Display Order or Working Order processes, the NYSE Arca Marketplace shall match and execute any remaining part of the order in the Tracking Order Process in price/time priority, except that (1) any portion of an order received from another market center or market participant shall be cancelled immediately, and (2) an incoming ISO order shall not interact with the Tracking Order Process.

cancelled by the submitting ETP Holder. Each execution and subsequent reposting prior to exhaustion or cancellation would result in a new time priority.

The Exchange believes the elimination of the Tracking Order's current cancellation feature would benefit Exchange ETP Holders and customers by maintaining available liquidity in the Tracking Order Process, thereby increasing the likelihood that Tracking Orders would interact with contra-side liquidity and receive an execution. The proposed amendment would also increase ETP Holder efficiency with respect to time and messaging resources by eliminating the need to re-enter the balance of partially executed Tracking Orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is 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. Specifically, the Exchange believes that the proposed change would maintain available liquidity in the Tracking Order Process while also increasing ETP Holder efficiency with respect to time and messaging resources by eliminating the need to re-enter the balance of partially executed Tracking Orders.

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

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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–NYSEArca–2010–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–96. 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,[9] 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–2010–96 and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28690 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63268; File No. SR–SCCP–2010–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Suspension of Certain Provisions Due to Inactivity

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 27, 2010, Stock Clearing Corporation of Philadelphia ("SCCP") 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 SCCP. SCCP filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

Rule 19b–4(f)(3)[4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to amend its By-Laws to: (1) Suspend certain maintenance and reporting requirements during the period of inactivity of SCCP; (2) remove all references to the Philadelphia Depository Trust Company; (3) remove the requirement to furnish an annual statement of SCCP's business and affairs; (4) remove references to certain standing committees of NASDAQ OMX PHLX ("PHLX"); (5) reflect the change of the name of The Philadelphia Stock Exchange to NASDAQ OMX PHLX LLC; and (6) make conforming changes to the rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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

SCCP is a wholly owned subsidiary of PHLX and is registered with the Commission as a clearing agency pursuant to Section 17A of the Act.[5] On July 24, 2008, The NASDAQ OMX Group, Inc. completed an acquisition of The Philadelphia Stock Exchange and renamed it NASDAQ OMX PHLX. Thereafter, a decision was made to cease SCCP operations and on December 31, 2008, SCCP ceased all business operations with the exception of the return of the clearing fund deposits that were provided to SCCP by its members for the purpose of offsetting SCCP's financial risk while operating a clearing agency for the member. SCCP returned all clearing fund deposits by September 30, 2009; therefore, as of that date SCCP no longer maintains clearing members or any other clearing operations. However, SCCP desires to maintain its registration as a clearing agency for possible active operations in the future.

Currently, SCCP only conducts the administrative operations that are required to maintain its registration, which generally consist of tax and record maintenance obligations, as well as the various maintenance and reporting requirements of a clearing agency. Since SCCP no longer maintains members or conducts clearing business operations, SCCP is requesting that it may suspend certain maintenance and reporting requirements where it makes sense to do so. SCCP believes that it is appropriate under the circumstances of SCCP's inactivity to suspend the following portions of its By-Laws or Rules during any period in which SCCP has suspended its operations and is in an inactive status:

(1) *SCCP Article IV Section 2(c) and (d):* SCCP proposes to suspend the requirement that the Board of Directors contain at least one participant, and to amend the requirement that at least one of SCCP's directors must be a governor of the Exchange;

(2) *SCCP Article IV, Section 8:* SCCP proposes to suspend the requirement to maintain Standing Committees;

(3) *SCCP Rule 4, Section 1:* SCCP proposes to eliminate the need for a Participant Fund and furthermore defines the term "inactive".

(4) *SCCP Rule 11, Reserve Fund:* SCCP proposes to suspend the requirement for the reserve fund;

(5) *SCCP Rule 28:* SCCP proposes to suspend the requirement of: (a) furnishing annual unconsolidated audited comparative financial statements prepared in accordance with generally accepted accounting principles; (b) accompanied by a report prepared by an independent public accountant; furnishing unaudited quarterly financial statements; and (c) furnishing an annual review of internal control prepared by independent public accountants.

During the time SCCP was active, SCCP's Audit Committee and Finance Committee were also the comparable committees of SCCP's parent, The Philadelphia Stock Exchange. However, PHLX has since eliminated its own Audit Committee and Finance Committee and allows the function of those committees to be performed by other board committees within its corporate structure. Accordingly, SCCP will amend its rules to provide that, in the event SCCP resumes active operations, it will have its own Audit Committee and Finance Committee.

SCCP also proposes to remove SCCP By-Law Article X regarding the presentation of an annual statement of the corporation at each annual meeting. SCCP believes Article X is not legally required and therefore proposes to remove this language permanently.

SCCP also proposes to make certain administrative changes. Certain SCCP By-Laws and rules reference the Philadelphia Depository Trust Company ("Philadep"), a trust company that was deregistered as a national clearing agency as of December 31, 2002, and dissolved as a trust company in the Commonwealth of Pennsylvania on August 7, 2004. At this time, SCCP proposes to eliminate all references to Philadep. In addition, SCCP proposes to eliminate Rule 4, Section 1, paragraph four, section (ii). This section is duplicative of section (i). Furthermore, SCCP proposes to make clerical changes that are necessary due to the changes contained within this proposed rule change. Finally, SCCP proposes to amend the By-Laws and the Rules to reflect the change of the name of The Philadelphia Stock Exchange to NASDAQ OMX PHLX LLC.

SCCP states that that its proposal is consistent with Section 17A of the Act[6] in general and furthers the objectives of Section 17A(b)(3)(F) of the Act[7] in particular in that it is designed to remove impediments to and perfect the mechanism of national market system, and, in general does not impose any burden on competition not necessary or appropriate. SCCP further states that the proposal seeks to suspend maintenance and reporting requirements and make other administrative changes during the time when SCCP has suspended its business operations. None of these changes affect the investing public but rather are concerned solely with the administration of SCCP.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP 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

SCCP has not solicited or received written comments relating to the proposed rule change. SCCP will notify the Commission of any written comments it receives.

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(3) [9] because it is concerned solely with the administration of SCCP. 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–SCCP–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–SCCP–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at SCCP's principal office and on SCCP's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*. 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–SCCP–2010–03 and should be submitted on or before December 6, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28663 Filed 11–12–10; 8:45 am]

BILLING CODE 8011–01–P

[8] *Supra* note 2.

[9] *Supra* note 3.

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12379 and #12380]

U.S. Virgin Islands Disaster #VI–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Territory of the U.S. Virgin Islands (FEMA–1948–DR), dated 11/05/2010.

Incident: Severe Storms, Flooding, Mudslides, and Landslides associated with Tropical Storm Otto.

Incident Period: 10/01/2010 through 10/08/2010.

DATES: *Effective Date:* 11/05/2010.

Physical Loan Application Deadline Date: 01/04/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/05/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Islands: Saint Croix; Saint John; Saint Thomas, Including Water Island.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12379B and for economic injury is 12380B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–28671 Filed 11–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12375 and #12376]

South Dakota Disaster #SD–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1947–DR), dated 11/02/2010.

Incident: Severe Storms and Flooding.

Incident Period: 09/22/2010 through 09/23/2010.

DATES: *Effective Date:* 11/02/2010.

Physical Loan Application Deadline Date: 01/03/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 08/02/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/02/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Brookings; Lake; Moody; Union; and the Flandreau Santee Sioux Tribe.

The Interest Rates are:

	Percent
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12375B and for economic injury is 12376B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–28682 Filed 11–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12368 and #12369]

Puerto Rico Disaster #PR–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–1946–DR), dated 10/26/2010.

Incident: Severe Storms, Flooding, Mudslides, and Landslides associated with Tropical Storm Otto.

Incident Period: 10/04/2010 through 10/08/2010.

DATES: *Effective Date:* 11/05/2010.

Physical Loan Application Deadline Date: 12/27/2010.

Economic Injury (Eidl) Loan Application Deadline Date: 07/26/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Puerto Rico, dated 10/26/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Adjuntas; Morovis; Orocovis; Villalba.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–28673 Filed 11–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12373 and #12374]

California Disaster #CA–00161

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 11/05/2010.

Incident: Roseville Galleria Mall Fire.

Incident Period: 10/21/2010 through 10/22/2010.

EFFECTIVE DATE: 11/05/2010.

Physical Loan Application Deadline Date: 01/04/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Placer.

Contiguous Counties:

California: El Dorado, Nevada, Sacramento, Sutter, Yuba.

Nevada: Carson City, Douglas, Washoe.

The Interest Rates are:

	Percent
For Physical Damage.	
Homeowners With Credit Available Elsewhere	4.500
Homeowners Without Credit Available Elsewhere	2.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury.	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12373 5 and for economic injury is 12374 0.

The States which received an EIDL Declaration # are California; Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 5, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–28587 Filed 11–12–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets DOT–OST–2010–0181 and DOT–OST–2010–0215]

Applications of National Air Cargo Group, Inc. D/B/A National Airlines for Certificate Authority

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order to Show Cause (Order 2010–11–05).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding National Air Cargo Group, Inc. d/b/a National Airlines fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 19, 2010.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–2010–0181 and DOT–OST–2010–0215 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division (X–56, Room W86–465), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7785.

Dated: November 5, 2010.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–28620 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Island Airlines, LLC for Commuter Air Carrier Authorization

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2010–11–4), Docket DOT–OST–2010–0156.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Island Airlines, LLC, fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than November 19, 2010.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0156 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: November 5, 2010.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010–28618 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0355]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 15, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0355 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Roger H. Allen

Mr. Allen, age 60, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin;

and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from North Carolina.

Thomas H. Baalmann

Mr. Baalmann, 66, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Baalmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Jerry A. Barber

Mr. Barber, 65, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Barber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Robert V. Boltz

Mr. Boltz, 63, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Boltz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Julie A. Brandvold

Ms. Brandvold, 43, has had ITDM since 2005. Her endocrinologist examined her in 2010 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of her diabetes using insulin; and is able to drive a CMV safely. Ms. Brandvold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2010 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from North Dakota.

Richard E. Crum

Mr. Crum, 60, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Crum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Marc A. Cunningham

Mr. Cunningham, 31, has had ITDM since 1987. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cunningham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Terry D. Cunningham

Mr. Cunningham, 58, has had ITDM since 2004. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cunningham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

William S. Dawson

Mr. Dawson, 42, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dawson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Dean A. Dalessandro

Mr. Dalessandro, 55, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr.

Dalessandro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Albert H. Feldt

Mr. Feldt, 49, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Feldt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Christopher J. Grause

Mr. Grause, 32, has had ITDM since 2001. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Grause meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Shannon A. Griffin

Mr. Griffin, 23, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Griffin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri which allows him to drive any non-commercial vehicle except motorcycles.

Edward M. Houston

Mr. Houston, 49, has had ITDM since 1992. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Houston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from California.

John R. MacDougall

Mr. MacDougall, 52, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. MacDougall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Carlos E. Martinez

Mr. Martinez, 61, has had ITDM since approximately 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Martinez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Connecticut.

Matthew M. Rollins

Mr. Rollins, 31, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Rollins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from South Carolina.

Shawn G. Sherman

Mr. Sherman, 57, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sherman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Mark W. Shuff

Mr. Shuff, 63, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Shuff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have

diabetic retinopathy. He holds a Class E operator's license from Louisiana.

Steven M. Simpson

Mr. Simpson, 50, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Simpson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

James H. Smith

Mr. Smith, 66, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Washington, DC.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 5, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–28695 Filed 11–12–10; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0287]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before December 15, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0287 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *Please see* the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical

Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 15 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Robert W. Blankenship

Mr. Blankenship, age 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Blankenship has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Blankenship reported that he has driven straight trucks for 29 years, accumulating 580,000 miles and tractor-trailer combinations for 29 years, accumulating 2.3 million miles. He holds a Class A Commercial Driver's License (CDL) from California. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. He exceeded the speed limit by 10 mph.

Bryan K. Deborde

Mr. Deborde, 39, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2010, his optometrist noted, "It is my opinion that Mr. Deborde has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Deborde reported that he has driven tractor-trailer combinations for 19 years, accumulating 1.6 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 10 miles per hour (mph).

Michael K. Engemann

Mr. Engemann, 32, has had a distorted cornea in his right eye since 1989 due trauma. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mike has sufficient vision to operate a commercial vehicle." Mr. Engemann reported that he has driven straight trucks for 12 years, accumulating 480,000 miles and tractor-trailer combinations for 12 years, accumulating 960,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Pete R. Gonzalez

Mr. Gonzalez, 25, has had optic nerve atrophy in his right eye since 1998 due to trauma. The best corrected visual acuity in his right eye is 20/300 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Pete has sufficient vision in the right eye to perform the driving tasks required to operate a commercial vehicle." Mr. Gonzalez reported that he has driven straight trucks for 4 years, accumulating 360,000 miles and tractor-trailer combinations for 4 years, accumulating 360,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John W. Harbaugh

Mr. Harbaugh, 62, has had amblyopia and optic atrophy in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision only and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "Formal visual field perimetry testing reveals 140 degrees of dynamic perception in the left eye permitting Mr. Harbaugh to operate a commercial vehicle without restrictions." Mr. Harbaugh reported that he has driven straight trucks for 32 years, accumulating 1.2 million miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael E. Herrera, Jr.,

Mr. Herrera, 53, has had primary open angle glaucoma in his left eye since 2009. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my professional opinion. Mr. Herrera has sufficient vision to drive a commercial vehicle. Mr. Herrera reported that he has driven straight trucks for 23 years, accumulating 23,000 miles and tractor-trailer combinations for 8 years, accumulating 8,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William E. Jacobs

Mr. Jacobs, 63, has had toxoplasmosis in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I feel he has sufficient vision to perform the driver's tasks required to operate a commercial vehicle." Mr. Jacobs reported that he has driven buses for 13 years, accumulating 247,000 miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Perry D. Jensen

Mr. Jensen, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "This patient has sufficient vision to drive a commercial vehicle." Mr. Jensen reported that he has driven straight trucks for 30 years, accumulating 600,000 miles and tractor-trailer combinations for 30 years, accumulating 150,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph L. Jones

Mr. Jones, 55, has had exotropia and amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "Mr. Jones exhibits sufficient vision to operate a commercial vehicle." Mr. Jones reported that he has driven straight trucks for 32 years, accumulating 480,000 miles and tractor-trailer combinations for 32 years, accumulating 1.9 million miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary L. Nicholas

Mr. Nicholas, 53, has complete loss of vision in his right eye since childhood. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Nicholas reported that he has driven straight trucks for 36 years, accumulating 360,000 miles. He holds a Class C chauffeur's license from Michigan. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

James G. Pitchford

Mr. Pitchford, 67, has had a prosthetic right eye since childhood. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "It is my opinion that this patient has sufficient vision to perform his driving tasks and operate a commercial vehicle." Mr. Pitchford reported that he has driven straight trucks for 20½ years, accumulating 483,585 miles and tractor-trailer combinations for 20½ years, accumulating 1.1 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Virgil R. Story

Mr. Story, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I feel in my medical opinion that patient has sufficient vision to perform his currently assigned driving tasks required to operate a commercial vehicle." Mr. Story reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.6 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John A. Thomas, Jr.

Mr. Thomas, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I find that his vision is adequate to operate any commercial vehicle without glasses." Mr. Thomas reported that he has driven straight trucks for 32 years, accumulating 640,000 miles and tractor-trailer combinations for 32 years, accumulating 1.7 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard L. Totels

Mr. Totels, 57, has had macular scarring in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, this patient has adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Totels reported that he has driven tractor-trailer combinations for 37 years, accumulating 3.7 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James B. Woolwine

Mr. Woolwine, 44, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "He has sufficient visual capabilities to operate a commercial vehicle." Mr. Woolwine reported that he has driven straight trucks for 4 years, accumulating 200,000 miles and tractor-trailer combinations for 4 years, accumulating 60,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 15, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 5, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy and Program Development.

[FR Doc. 2010–28699 Filed 11–12–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8921

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8921, Applicable Insurance Contracts Information Return.

DATES: Written comments should be received on or before January 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

Title: Applicable Insurance Contracts Information Return.

OMB Number: 1545–2083.

Form Number: Form 8921.

Abstract: To comply with IRC section 6050V, as added by the Pension Protection Act of 2006, an applicable exempt organization must file a Form 8921 for each structured transaction under which it makes reportable acquisitions of applicable insurance contracts. The information gathered will be used by the Treasury to issue a two-year report to Congress.

Current Actions: There are no changes being made to Form 8921 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 35 hours, 53 minutes.

Estimated Total Annual Burden Hours: 1,794,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–28585 Filed 11–12–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106902–98 (T.D. 8833)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106902–98 (TD 8833), Consolidated Returns–Consolidated Overall Foreign Losses and Separate Limitation Losses (§ 1.1502–9(c)(2)(iv)).

DATES: Written comments should be received on or before January 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses.

OMB Number: 1545–1634.

Regulation Project Number: REG–106902–98. (T.D. 8833).

Abstract: The regulation provides guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Average Time per Respondent: 1 hr., 30 min.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–28576 Filed 11–12–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115054–01 (T.D. 9074)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115054–01 (TD 9074) Treatment of Community Income for Certain Individuals Not Filing Joint Returns (§ 1.66–4).

DATES: Written comments should be received on or before January 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Community Income for Certain Individuals Not Filing Joint Returns.

OMB Number: 1545–1770.

Regulation Project Number: REG–115054–01. (T.D. 9074).

Abstract: The regulations provide rules to determine how community income is treated under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the IRS Restructuring and Reform Act of 1998.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden contained in § 1.66–4 is reflected in the burden of Form 8857.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 3, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–28578 Filed 11–12–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Rev. Proc. 2007–99 (RP–127367–07), 9100 Relief Under Sections 897 and 1445

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Rev. Proc. 2007–99 (RP–127367–07), 9100 Relief Under Sections 897 and 1445.

DATES: Written comments should be received on or before January 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rev. Proc. 2007–99 (RP–127367–07), 9100 Relief Under Sections 897 and 1445.

OMB Number: 1545–2098.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings under sections 897 and 1445. This revenue procedure provides a simplified method for taxpayers to request relief for late filings under sections 1.897–2(g)(1)(ii)(A), 1.897–2(h)(2), 1.1445–2(d)(2), 1.1445–5(b)(2), and 1.1445–5(b)(4) of the Income Tax Regulations.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 1,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–28586 Filed 11–12–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals and One Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of one newly-designated entity and three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13224, of the entity and individuals identified in this notice are effective on November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On November 4, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity and three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. AL REHMAT TRUST (a.k.a. AL-RAHMAT TRUST; a.k.a. AL-REHMAN TRUST; a.k.a. AR-RAHMAN TRUST; a.k.a. UR-RAHMAN TRUST; a.k.a. UR-RAMAT TRUST), 537/1–Z Defense Housing Area (DHA), Lahore, Pakistan; Office 22, Third Floor, al Fatah Plaza, Commerical Market, Rawalpindi, Pakistan; Room No. 22, 3rd Floor, al-Fateh Plaza, Commerical Market Road, Chandi Chowk, Rawalpindi, Pakistan; Karachi, Pakistan; Nelam Road, Bandi Chehza, Muzaffarabad, Pakistan; Balakot, Besyan Chouk, Pakistan; Rajana Road, Srah-Salah, Haripur, Pakistan; Rehana Road, Sirai Salih, Post Box #22, G.P.O. Haripur, Northwest Frontier Province, Pakistan [SDGT]

2. ALVI, Mohammad Masood Azhar (a.k.a. AZHAR, Masud; a.k.a. ESAH, Wali Adam; a.k.a. ISAH, Wali Adam), 1260/108, Block NO. 6–B, Kausar Colony, Model Town-B, Bahawalpur, Punjab Province, Pakistan; Lahore City, Lahore District, Punjab Province, Pakistan; DOB 10 Jul 1968; alt. DOB 10 Jun 1968; POB Bahawalpur, Punjab Province, Pakistan; citizen Pakistan; nationality Pakistan; Maulana (individual) [SDGT]

3. CHEEMA, Azam (a.k.a. BHAI, Chima; a.k.a. CHEEMA, Asim; a.k.a. CHEEMA, Azzam; a.k.a. CHEEMA, Mohammed Azam; a.k.a. CHIMA, Azam; a.k.a. CHIMA, Azim), Bahawalpur, Pakistan; Islamabad, Pakistan; Muzaffarabad, Pakistan; DOB 1953; POB Faisalabad, Pakistan; citizen Pakistan; nationality Pakistan (individual) [SDGT]

4. MAKKI, Hafiz Abdul Rahman (a.k.a. MAKI, HAFAZ ABDUL RAHMAN; a.k.a. MAKKI, ABDULRAHMAN; a.k.a. MAKKI, HAFIZ ABDUL REHMAN), Muridke, Punjab Province, Pakistan; DOB 1948; POB Bahawalpur, Punjab Province, Pakistan (individual) [SDGT]

Dated: November 4, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–28595 Filed 11–12–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Restoration of the 1889 Soldiers Home Chapel and Rehabilitation of the 1901 Chaplain's Quarters at the Clement J. Zablocki Veterans Affairs Medical Center (VAMC) in Milwaukee, WI

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of VA intends to enter into an EUL of the 1889 Soldiers Home Chapel (Building #12), the 1901 Chaplain's Quarters (Building

#16), and the surrounding approximately 2.5 acres at the Clement J. Zablocki VAMC in Milwaukee, Wisconsin.

The selected Lessee will finance, design, develop, construct, manage, maintain, and operate the Soldiers Home Chapel and Chaplain's Quarters. As consideration for the lease, the Lessee will be required to restore the Chapel and rehabilitate the Chaplain's Quarters.

Lessee will also provide referral counseling services for homeless Veterans, and set aside at least one room in the Chapel to provide counseling and outreach services for homeless Veterans. Lessee will provide priority to Veterans and their families for funerals, weddings, wedding renewals, multi-denominational and community events and presentations.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an Enhanced-Use Lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: August 27, 2010.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2010–28632 Filed 11–12–10; 8:45 am]

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Federal Register

Monday,
November 15, 2010

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 26, 121, et al.
Aging Airplane Program: Widespread Fatigue Damage; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 26, 121, and 129

[Docket No. FAA–2006–24281; Amendment Nos. 25–132, 26–5, 121–351, 129–48]

RIN 2120–AI05

Aging Airplane Program: Widespread Fatigue Damage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations pertaining to certification and operation of transport category airplanes to prevent widespread fatigue damage in those airplanes. For certain existing airplanes, the rule requires design approval holders to evaluate their airplanes to establish a limit of validity of the engineering data that supports the structural maintenance program (LOV). For future airplanes, the rule requires all applicants for type certificates, after the affective date of the rule, to establish an LOV. Design approval holders and applicants must demonstrate that the airplane will be free from widespread fatigue damage up to the LOV. The rule requires that operators of any affected airplane incorporate the LOV into the maintenance program for that airplane. Operators may not fly an airplane beyond its LOV unless an extended LOV is approved.

DATES: These amendments become effective January 14, 2011.

FOR FURTHER INFORMATION CONTACT: If you have technical questions concerning this rule, contact Walter Sippel, ANM–115, Airframe/Cabin Safety Branch, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2774; facsimile (425) 227–1232; e-mail *walter.sippel@faa.gov.* If you have legal questions, contact Doug Anderson, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *douglas.anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design of transport category airplanes, and
- New requirements necessary for safety for the design, production, operation and maintenance of those airplanes and for other practices, methods, and procedures relating to those airplanes.

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I. Executive Summary

This final rule requires certain actions to prevent catastrophic failure due to widespread fatigue damage (WFD) throughout the operational life of certain existing transport category airplanes and all those to be certificated in the future. Existing airplanes subject to the rule are turbine-powered airplanes with a type certificate issued after January 1, 1958, which have a maximum takeoff gross weight greater than 75,000 pounds and are operated under part 121 or 129. The rule applies to all transport category airplanes to be certificated in the future, regardless of maximum takeoff gross weight or how they are operated. The benefits of this rule are estimated at a present value of $4.8 million. The cost is estimated at a present value of $3.6 million.

FIGURE 1—WFD FINAL RULE BENEFITS AND COSTS

	Nominal value ($ millions)	7% Present value ($ millions)
Benefits	9.8	4.8
Costs	3.8	3.6

Fatigue damage to a metallic structure occurs when the structure is subjected to repeated loads, such as the pressurization and depressurization that occurs with every flight of an airplane. Over time this fatigue damage results in cracks in the structure, and the cracks may begin to grow together. Widespread fatigue damage is the simultaneous presence of fatigue cracks at multiple structural locations that are of sufficient size and density that the structure will no longer meet the residual strength requirements of § 25.571(b).[1] Structural fatigue characteristics of airplanes are understood only up to the point where analyses and testing of the structure are valid. There is concern about operating an airplane beyond that point for several reasons. One reason is that WFD is increasingly likely as the airplane ages, and is certain if the airplane is operated long enough. Another is that existing inspection methods do not reliably detect WFD because cracks are initially so small and may then link up and grow so rapidly that the affected structure fails before an inspection can be performed to detect the cracks.

To preclude WFD related incidents in existing transport category airplanes, this final rule requires holders of design approvals for those airplanes subject to the rule to perform the following actions:

1. Establish a limit of validity of the engineering data that supports the structural maintenance program (LOV);
2. Demonstrate that WFD will not occur in the airplane prior to reaching the LOV; and
3. Establish or revise the Airworthiness Limitations section in the Instructions for Continued Airworthiness to include the LOV.

As used in this preamble, the term "design approval holders" includes holders of type certificates, supplemental type certificates, or amended type certificates, and applicants for such approvals. In the context of this final rule, the design approval holder is generally the type certificate holder. Requiring design approval holders to perform the actions listed above is intended to support compliance by operators with today's amendments to parts 121 and 129. This final rule amends those parts to require that operators incorporate the LOV as airworthiness limitations into their maintenance program for each affected model that they operate.

The amendments to the operating rules have the effect of prohibiting operation of an airplane beyond its LOV. However, today's rule provides an option for any person to extend the LOV for an airplane and to develop the maintenance actions which support the extended limit. Thereafter, to operate an airplane beyond the existing LOV, an operator must incorporate the extended LOV and associated maintenance actions into its maintenance program. The airplane may not be operated beyond the extended LOV.

In response to comments on the notice of proposed rulemaking, the FAA has made a number of substantive changes which significantly reduce the costs presented in the proposal. The FAA has—

- Eliminated the requirement to evaluate WFD associated with most repairs, alterations, and modifications of the baseline[2] airplane structure.
- Simplified how an LOV may be extended.
- Extended the compliance dates by which design approval holders must establish an LOV for existing airplanes.
- Extended the time for operators to incorporate LOVs into their maintenance programs.
- Limited the applicability of the final rule to "transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958."

Today's rule requires that design approval holders take the necessary steps to preclude WFD in the future by requiring that they establish LOVs. Although the rule allows design approval holders to establish LOVs without relying on maintenance actions, the FAA expects most current design approval holders to adopt LOVs that will rely on such actions. Since WFD is by definition a condition in which structure will no longer meet the residual strength requirements of § 25.571(b), it could lead to a catastrophic failure. Thus the FAA would mandate those maintenance actions by airworthiness directive. The agency expects these actions to greatly reduce the number of unanticipated inspections and repairs resulting from emergency airworthiness directives the FAA issues when WFD is discovered in service. The FAA estimates the value of managing WFD with maintenance actions developed under this final rule versus the current practice of issuing airworthiness directives as WFD is found is worth $4.8 million in present value. There are other benefits of this rule that were not included in the final benefit assessment. They include prevention of accidents and a longer economic life for the airplane. The FAA estimates that this rule will cause one airplane to be retired because of its reaching the anticipated LOV in the 20-year analysis period. The retirement of this one airplane will result in costs of approximately $3.8 million, with a present value of approximately $3.6 million. This operator's cost is the only cost attributed to the final rule, since manufacturer costs were found to be minimal.

Thus, as noted earlier, this final rule's estimated present value benefits of $4.8 million exceed the estimated present value costs of approximately $3.6 million.

II. Background

A. Summary of the NPRM

On April 18, 2006, the FAA published a notice of proposed rulemaking (NPRM), entitled Aging Aircraft Program: Widespread Fatigue Damage.[3] That proposal was based on a recommendation from the Aviation Rulemaking Advisory Committee (ARAC). The NPRM contained extensive requirements for setting and supporting an initial operational limit for an airplane model. The FAA proposed that the rule apply to transport category airplanes with a maximum gross takeoff weight of greater than 75,000 pounds. The due date for comments was July 17, 2006.

The FAA proposed that design approval holders for those airplanes be required to take actions to preclude WFD. For new airplanes, the FAA proposed to amend § 25.571 and Appendix H to part 25 to require that applicants for a new type certificate establish an initial operational limit and include that limit in the Airworthiness Limitations section of the Instructions for Continued Airworthiness for the airplane. The agency also proposed that applicants develop guidelines for evaluating repairs, alterations, and modifications for WFD.

[1] After sustaining a certain level of damage, the remaining structure must be able to withstand certain static loads without failure. In the context of WFD, the damage is a result of the simultaneous presence of fatigue cracks at multiple locations in the same structural element (*i.e.,* multiple site damage) or the simultaneous presence of fatigue cracks in similar adjacent structural elements (*i.e.,* multiple element damage).

[2] Baseline structure means structure that is designed under the original type certificate or amended type certificate for that airplane model.

[3] 71 FR 19928

Section 25.1807 proposed that holders of design approvals for existing airplanes or applicants for such approvals be required to do the following:

1. Establish an initial operational limit; and
2. Establish a new Airworthiness Limitations section or revise an existing Airworthiness Limitations section to include the initial operational limit.

Section 25.1807(g) proposed that holders of design approvals for existing airplanes or applicants for such approvals be required to prepare the following:

1. A list of repairs and modifications developed and documented by the design approval holder;
2. Service information for maintenance actions necessary to preclude WFD from occurring before the initial operational limit; and
3. Guidelines for identifying, evaluating, and preparing service information for repairs, alterations, and modifications for which no service information exists.

For existing airplanes for which an initial operational limit is established, § 25.1809 proposed that design changes be evaluated for susceptibility to WFD and, if a change were susceptible, that the design approval holder identify when WFD is likely to occur and whether maintenance actions would be required. Section 25.1811 provided that any person could apply to extend an operational limit, using a process similar to that for establishing the initial operational limit. Under § 25.1813, certain repairs, alterations, and modifications proposed for installation on airplanes with an extended operational limit would also be evaluated.

The FAA proposed to amend the operating requirements of parts 121 and 129 to require that no operator could operate an airplane unless the initial operational limit or extended operational limit for the airplane had been incorporated into the operator's maintenance program.

The NPRM contains the background and rationale for this rulemaking and, except where the FAA has made revisions in this final rule, should be referred to for that information.

B. Related Activities

In July 2004, the FAA published the notice entitled "Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)"[4] to propose airworthiness requirements for design approval holders to support certain operational rules. The FAA requested comments on the agency's proposal.

In July 2005, the FAA published a disposition of comments received in response to our request.[5] Also in July 2005, the agency published a policy statement, "Safety–A Shared Responsibility–New Direction for Addressing Airworthiness Issues for Transport Airplanes,"[6] that explains our reasons for adopting requirements for design approval holders.

On May 22, 2006, the FAA published a Notice of Availability and request for comments on proposed Advisory Circular (AC) 120–YY, Widespread Fatigue Damage on Metallic Structure. The notice stated that the proposed AC could be found on the Internet at *http://www.faa.gov/aircraft/draft_docs.* This proposed advisory circular provides guidance to design approval holders on establishing initial and extended operational limits to preclude WFD for certain transport category airplanes and evaluating repairs, alterations, and modifications to the airplanes. The advisory circular also provides guidance to operators on incorporating the initial or extended operational limit and any related airworthiness limitation items into their maintenance programs. The notice specified that comments on the proposed advisory circular were to be received by July 17, 2006.

On July 7, 2006, at the request of a number of commenters, the FAA published a notice[7] extending the comment period on both the NPRM and proposed AC 120–YY to September 18, 2006. On August 18, 2006, the agency posted proposed AC 25.571–1X, Damage Tolerance and Fatigue Evaluation of Structure, on the Internet at *http://www.faa.gov/aircraft/draft_docs.* Comments on this document, which proposed revision of existing AC 25.571–1C, were due by October 21, 2006.

On November 26, 2006, the FAA held a public meeting with the ARAC Transport Airplane and Engine Issues Group. Under ARAC, the Airworthiness Assurance Working Group (AAWG) had previously provided recommendations to the FAA on how to address widespread fatigue damage. Because the FAA had received several comments concerning differences between the AAWG's recommendations and the NPRM, the meeting was held to discuss the reasons for these differences. The FAA's presentation at the meeting has been placed in the docket for this rulemaking. Except as discussed in the context of specific issues affecting this final rule, the FAA will not revisit those differences here.

On December 11, 2008, at the request of the Acting Administrator, the FAA held a public meeting to allow comments on the changes that had occurred to the rule since it had been proposed in the NPRM. A Technical Document describing those changes was posted in the docket, and the announcement of the meeting and opening of the comment period for the Technical Document was published in the **Federal Register** on Nov. 7, 2008 (73 FR 66205). The public was invited to submit comments on the Technical Document either in person at the meeting or by sending them to the docket. Seventy-one people attended the meeting and Boeing, the Air Transport Association of America (ATA), and FedEx made presentations, along with the FAA. Many attendees commented or asked questions. In addition, 12 commenters submitted comments about the Technical Document to the docket. The comment period closed on December 22, 2008.

While some of the comments received during the comment period for the Technical Document were new, many were restatements of comments made after publication of the NPRM. We address all of the comments, from both comment periods, in the section below. Comments received during both comment periods are posted to the docket. A transcript of the public meeting, including presentations given and comments delivered there, may also be found in the docket.

C. Differences Between NPRM and Final Rule

1. Substantive Changes

The FAA has eliminated the requirement to evaluate WFD associated with most repairs, alterations, and modifications of the baseline airplane structure.[8] The agency has also made a change in terminology. This final rule uses the term "limit of validity of the engineering data that supports the maintenance program" (LOV) rather than the term "initial operational limit." The FAA finds that the term "limit of validity" is more appropriate than the term "initial operational limit" in defining the point to which an airplane

[4] 69 FR 45936, July 30, 2004.

[5] 70 FR 40168, July 12, 2005: Fuel Tank Safety Compliance Extension (final rule) and Aging Airplane Program Update (Request for comments).

[6] 70 FR 40166, July 12, 2005 (PS–ANM110–7–12–2005).

[7] 71 FR 38540.

[8] The final rule requires that design approval holders evaluate airplane configurations that include modifications mandated by airworthiness directive.

may be safely operated. The requirements in this final rule for establishing the LOV under § 26.21 are that it be supported by test evidence and analysis at a minimum and, if available, by service experience or service experience and teardown inspection results for those airplanes of similar structural design with the highest total accumulation of flight cycles or flight hours (commonly referred to as high-time airplanes). This criterion is similar to the criterion used in § 25.571(b). This final rule also clarifies how the LOV may be extended, using the same type of evaluation as that required for setting the LOV under § 26.21.

In response to requests for more time, the FAA has extended the compliance dates by which design approval holders must establish an LOV for existing airplanes. Those dates vary according to the age of the airplanes, from 18 months after the effective date for the oldest airplanes to 60 months after the effective date for the newest ones. Additionally, the agency has extended the time for operators to incorporate LOVs into their maintenance programs. These dates vary with the age of the airplanes as well, and are 12 months later than the related design approval compliance dates, thus giving operators 12 months to incorporate the LOV into their maintenance programs. Operator compliance dates range from 30 to 72 months after the effective date. The FAA has also changed the proposed operational rules to correct an inadvertent ambiguity in the NPRM regarding obligations of operators of airplanes for which the type certificate holder might fail to establish an LOV as required.

Another change involves applicability to existing transport category airplanes. This final rule applies to "transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958." This limitation was added to make applicability of today's rule consistent with that of the other aging airplane rules. The FAA also added airplanes to the list of those excluded from the LOV requirements of § 26.21 because the airplanes are not operated under parts 121 or 129. Either they are being operated under different parts of the Code of Federal Regulations (CFR) or they are not in service at this time. The number of these airplanes still operating is very small, and the probability of their retirement in the near future is high.

2. Regulatory Evaluation Changes

The FAA has substantially revised the Regulatory Evaluation for several reasons. One concerns differences between the rule as proposed and the final rule. For example, the requirement to evaluate WFD associated with repairs, alterations, and modifications of the baseline airplane structure, except for those mandated by airworthiness directives, has been eliminated from this final rule. Another reason concerns information received during the rulemaking process which indicated that some of the initial assumptions about benefits and costs of the rule were not valid. For example, initially, the FAA assumed that design approval holders would set the LOV for a specific airplane model at the design service goal for that model. However, subsequently, some design approval holders indicated that they planned to set the LOV 33% to 180% higher. The net effect of these changes has been to dramatically reduce the costs estimated for compliance with the rule.

Our revised Regulatory Evaluation lists three potential sources of benefits of the rule, namely (1) prevention of accidents; (2) extension of the economic life of the airplane with corresponding revenues from that additional economic life; and (3) near elimination of emergency airworthiness directives.

Preventing a WFD accident is estimated to have benefits ranging from $20 million to $680 million. There are multiple factors, however, that make it difficult to forecast that this rule absolutely would prevent accidents. Among them are earlier FAA rulemaking actions to prevent known fatigue problems from reoccurring.

Similarly, although specific maintenance actions designed to extend the life of airplane structure have added years of service to the DC–9 fleet, quantification of such values for other models is unnecessary, given that benefits already exceed the nearly minimal costs.

As a result, the quantified benefit of this final rule is based solely on the near elimination of emergency ADs pertaining to WFD. The analysis assumes the rule will prevent 1.5 days of down time associated with emergency ADs.

3. New Part 26 for Design Approval Holders' Airworthiness Requirements

In the WFD proposed rule, and in proposals for other Aging Airplane Program rules, the FAA placed the airworthiness requirements for design approval holders in part 25, subpart I. As explained in the Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety final rule (EAPAS/FTS),[9] the FAA decided after further review and input from industry and foreign aviation authorities to place these requirements in a new part 26 and move the enabling regulations into part 21.[10] The FAA determined that this was the best course of action because it keeps part 25 applicable only to airworthiness standards for transport category airplanes. This is important because it maintains harmonization and compatibility among the United States, Canada, and the European Union regulatory systems. Providing references to part 26 in part 21 clarifies how the part 26 requirements will address existing and future design approvals.

In creating part 26, the FAA renumbered the proposed sections of part 25, subpart I, and incorporated the changes discussed in this preamble. A table of this renumbering is shown below.

FIGURE 2—TABLE SHOWING RELATIONSHIP OF PROPOSED PART 25 SUBPART I TO PART 26 FINAL RULE

Part 26 final rule	Proposed part 25
SUBPART C—Aging Airplane Safety—Widespread Fatigue Damage	Subpart I—Continued Airworthiness
§ 26.5 Applicability table	New [11]
§ 26.21 Limit of validity (LOV)	§ 25.1807 Initial operational limit: Widespread Fatigue Damage (WFD).
	§ 25.1809 Changes to type certificates: Widespread Fatigue Damage (WFD).
§ 26.23 Extended limit of validity (LOV)	§ 25.1811 Extended operational limit: Widespread Fatigue Damage (WFD)

[9] 72 FR 63363, November 8, 2007.

[10] Certification Procedures for Products and Parts.

[11] This section, which includes an applicability table for part 26, was adopted as part of the EAPAS final rule.

FIGURE 2—TABLE SHOWING RELATIONSHIP OF PROPOSED PART 25 SUBPART I TO PART 26 FINAL RULE—Continued

Part 26 final rule	Proposed part 25
	§ 25.1813 Repairs, alterations, and modifications: Widespread Fatigue Damage (WFD).

4. New Subparts for Airworthiness Operational Rules

The WFD NPRM was among several Aging Airplane Program rulemaking initiatives that proposed new subparts (subparts AA and B in parts 121 and 129, respectively) for airworthiness requirements, and redesignated certain sections of parts 121 and 129. Since the EAPAS/FTS final rule was the first of these rulemaking initiatives to be codified, the new subparts and redesignated sections were adopted in that rule. Therefore, the FAA has removed the regulatory language and related discussion about these changes from this final rule. This final rule adds new sections that include WFD-related requirements: §§ 121.1115 and 129.115.

D. Summary of Comments

The FAA received comments about the NPRM from 40 commenters, including airplane manufacturers, operators, aviation associations, and others. The comments covered an array of topics and contained a range of responses. There was much support from airplane manufacturers, operators, and associations for the concept of precluding WFD in aging airplanes. There were also a number of recommendations for changes and requests for clarification. As previously discussed, at the December 11, 2008 public meeting, Boeing, FedEx, and ATA gave presentations of their responses to the Technical Document.

In addition, the FAA received comments about airworthiness requirements for design approval holders. We addressed many of the same or similar comments in the July 2005 disposition of comments document to the Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments). We also explained in detail the need for these requirements in our July 2005 policy statement. As a result, the FAA will not revisit those comments here.

III. Discussion of the Final Rule

A. Overview

1. Widespread Fatigue Damage

Widespread fatigue damage is the simultaneous presence of cracks at multiple structural locations that are of sufficient size and density that the structure will no longer meet the residual strength requirements of 14 CFR 25.571(b). This may result in catastrophic structural failure and loss of the airplane.

Fatigue is the gradual deterioration of a material subjected to repeated structural loads. When it occurs in more than one location, cracks manifest themselves as multiple site damage or multiple element damage. Multiple site damage is the simultaneous presence of fatigue cracks at multiple locations that grow together in the same structural element, such as a large skin panel or lap joint. Multiple element damage is the simultaneous presence of fatigue cracks in similar adjacent structural elements, such as frames or stringers. Some structural elements are susceptible to both types of damage, and both types may occur at the same time.

Cracks associated with multiple site damage and multiple element damage are initially so small that they cannot be reliably detected with existing inspection methods. Widespread fatigue damage is especially hazardous because these small, undetectable cracks in metallic structure can "link up" and grow very rapidly to bring about catastrophic failure of the structure. Although operators perform routine structural inspections to detect fatigue damage, fatigue cracks related to WFD grow so rapidly that operators cannot inspect susceptible structures often enough to detect the cracks before they cause structural failure. As a result, many of the findings of these types of cracks have been fortuitous: mechanics and others have observed fatigue cracks while doing other work. For example, cracks have been found by workers while stripping and painting an airplane. Cracks have also been found by mechanics conducting unrelated inspections of skin anomalies on the external fuselage; further investigation revealed multiple cracks in stringers and circumferential joints.

In other cases, undetected multiple site damage in wing or fuselage structure has eventually led to catastrophic failure of the structure in flight. For example, wing failures have resulted in losses of C–130 and P4Y–2 airplanes. Failures of aft pressure bulkheads have caused decompression of B–747, DC–9, and L–1011 airplanes.

Concern about WFD was brought to the forefront of public attention in April 1988, when an 18-foot-long section of the upper fuselage of a Boeing Model 737 airplane separated from the airplane during flight. The airplane, operated by Aloha Airlines, was en route from Hilo to Honolulu, Hawaii, at 24,000 feet. Onboard were 89 passengers and 6 crewmembers. A flight attendant died as a result of the accident, and eight passengers were injured.

The damage to the airplane consisted of a total separation and loss of a major portion of the upper crown skin and other structure. The damaged area extended from the main cabin entrance door aft for about 18 feet. At the time of the accident, the airplane had accumulated 89,680 flight cycles and 35,496 flight hours.

In the years after the Aloha Airlines accident, WFD was discovered in the following airplanes:

- *Boeing 727:* Cracking along a lap joint.

In 1998, during maintenance, two cracks were found growing out from underneath the lap joint. Disassembly of the joint revealed a 20-inch hidden crack from multiple site damage on the lower row of rivet holes in the inner skin.

- *Boeing 737:* Cracking along a lap joint.

In July 2003, a mechanic preparing to paint discovered extensive multiple site damage with up to 10 inches of local link-up of cracks in one area.

- *Boeing 747:* Cracking of the aft pressure bulkhead.

In 2005, Boeing issued service information to address multiple site damage of the aft pressure bulkhead radial lap splices. The service information was based on analysis and fatigue testing of the aft pressure bulkhead.

- *Boeing 767:* Cracking of the aft pressure bulkhead.

On November 5, 2003, cracks were found at multiple sites common to a single radial lap splice during an inspection of the aft pressure bulkhead.

- *McDonnell Douglas DC–9:* Cracking of the aft pressure bulkhead.

On June 22, 2003, widespread fatigue damage on a DC–9 airplane led to rapid decompression at 25,000 feet. Later inspection revealed multiple site

damage with extensive link-up of cracks.

• *Lockheed C–130A:* Fatigue cracks in the wing structure.

On August 13, 1994, while responding to a forest fire in the Tahachapi Mountains near Pearblossom, California, the airplane experienced an in-flight separation of the right wing. All 3 flight crewmembers were killed, and the airplane was completely destroyed.

• *Lockheed C–130A:* Fatigue cracks in the wing structure.

On June 17, 2002, while executing a fire retardant drop over a forest fire near Walker, California, the airplane's wings folded upward at the center wing-to-fuselage attachment point, and the airplane broke apart. All three flight crewmembers were killed, and the airplane was completely destroyed.

• *Consolidated-Vultee P4Y–2:* Fatigue cracks in the wing structure.

On July 18, 2002, the airplane was maneuvering to deliver fire retardant over a forest fire near Estes Park, Colorado, when its left wing separated from the airplane. Both flight crewmembers were killed, and the airplane was destroyed. An examination of other Consolidated-Vultee P4Y–2 airplanes revealed that the area was difficult to inspect because of its location relative to fuselage structure.

• *Lockheed L–1011:* Failure in-flight of the aft pressure bulkhead stringer attach fittings.

In August 1995, an L–1011 airplane experienced a rapid decompression at 33,000 feet. Twenty stringer end fittings were found severed and the aft pressure bulkhead was separated from the fuselage crown by a crack approximately 12 feet long. The flight crew was unable to maintain cabin pressure control until after rapid descent.

• *Boeing 747:* Cracking of adjacent fuselage frames.

In 2005, during an overnight maintenance visit, missing skin fasteners common to a fuselage frame were discovered in the upper deck area. Further inspection revealed that the frame was severed. Substantial cracking was also found in the adjacent left and right frames.

• *Airbus A300:* Cracking of adjacent fuselage frames.

In 2002, investigations conducted as a result of fatigue cracks found on a test article and later in service revealed that cracking of certain adjacent fuselage frames could result in multiple element damage. The determination was based on analysis, service experience, and fatigue testing.

Since 1988, the FAA has issued approximately 100 airworthiness directives to address WFD in airplanes. Approximately 25 percent of these airworthiness directives were too urgent to allow the public an opportunity to comment in advance. These airworthiness directives required inspections, and the FAA later superseded the majority of them to expand the inspections or require modifications because inspections were not enough to preclude WFD.

Shortly after the Aloha Airlines accident, the AAWG [12] was formed to identify procedures to ensure continued structural airworthiness of aging transport category airplanes. Basic approaches defined by the group and accepted by the FAA included recommending procedures to preclude WFD in those airplanes. When ARAC was formed in 1991 to provide advice and recommendations on safety-related matters to the FAA, the AAWG became a working group under its auspices. In 2003 the AAWG completed its recommendation on WFD.

In 2004, the FAA tasked ARAC to "provide a written report on part 121 and 129 certificate holders operating airplanes with a maximum takeoff gross weight of greater than 75,000 pounds to assess the WFD characteristics of structural repairs, alterations, and modifications as recommended in a previous tasking of the Aviation Rulemaking Advisory Committee." [13] During the comment period on the NPRM for this final rule, the AAWG was working to complete Task 3, to recommend how an operator would include consideration of WFD for repairs, alterations, and modifications to airplanes operated under part 121 or 129.

On April 17, 2007, the AAWG presented its final report on Task 3 to ARAC. Many of the conclusions and recommendations in the final report are the same as those provided in the comments on the proposed rule which are discussed in this preamble.

2. Final Rule

This final rule requires actions to preclude WFD in transport category airplanes. It applies to both existing transport category airplanes that have a maximum takeoff gross weight greater than 75,000 pounds and to all transport category airplanes to be certified in the future, regardless of the maximum takeoff weight.

Today's rule imposes requirements on those holding design approvals for existing transport category airplanes that are subject to the rule. The design approval holders are required to evaluate the structural configuration of each model for which they hold a type certificate to determine its susceptibility to WFD and, if it is susceptible, to determine that WFD would not occur before the proposed LOV. The evaluation would be based on test evidence and analysis at a minimum and, if available, service experience or service experience and teardown inspection results of airplanes with a high number of total accumulated flight cycles or flight hours or both, which are frequently referred to as high-time airplanes. The evaluation would be performed on airplanes of similar structural design, accounting for differences in operating conditions and procedures. Using the results of the evaluation, the design approval holder must then establish an LOV.

Holders of approvals for design changes that increase an airplane's maximum takeoff gross weight to more than 75,000 pounds, or decrease it from more than 75,000 pounds to 75,000 pounds or less after the effective date of the rule, must also evaluate the affected airplanes for WFD and establish LOVs for those airplanes.

The final rule amends Appendix H to part 25 to require that the LOV which is established by the design approval holder be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness. It also amends operating rules in parts 121 and 129 to require that operators of an affected airplane incorporate into their maintenance programs an Airworthiness Limitations section that includes an LOV for that airplane.

The amendments to parts 121 and 129 have the effect of prohibiting operation of an airplane beyond its LOV.[14] For

[12] The group was initially known as the Airworthiness Assurance Task Force.

[13] Task 3.—Widespread Fatigue Damage (WFD) of Repairs, Alterations, and Modifications. Provide a written report providing recommendations on how best to enable part 121 and 129 certificate holders of airplanes with a maximum gross take-off weight of greater than 75,000 pounds to assess the WFD characteristics of structural repairs, alterations, and modifications as recommended in a previous ARAC tasking. The written report will include a proposed action plan to address and/or accomplish these recommendations including actions that should be addressed in Task 4 [below]. The report is to be submitted to the ARAC, Transport Airplane and Engine Issues Group, for approval. The ARAC, Transport Airplane and Engine Issues Group, will determine as appropriate the means by which the action plan will be implemented. The proposed actions and implementation process approved by the ARAC, Transport Airplane and Engine Issues Group, will be subject to FAA concurrence. Published in 69 FR 26641, May 13, 2004.

[14] Under 14 CFR 91.403(c), no person may operate an airplane unless applicable airworthiness limitations have been complied with. By requiring operators to incorporate the LOV airworthiness limitations developed by the design approval

Continued

transport airplane designs developed in the future, the LOV will be included in the airplane's airworthiness limitations and will apply regardless of how or by whom the airplane is operated. However, the final rule allows any person to extend the LOV for an airplane (if the person can demonstrate that it will be free of WFD up to the extended LOV) and to develop a maintenance program that supports the extended limit. Thereafter, the operator must incorporate the extended LOV and the associated maintenance actions into the Airworthiness Limitations section of its Instructions for Continued Airworthiness and may not operate the airplane beyond that limit.

The remainder of this section of the preamble discusses specific comments received.

B. Requests for Deferral or Withdrawal of Rule

The FAA received a number of comments that rulemaking to preclude WFD was not warranted and that the rule, as proposed, should be deferred or withdrawn. Commenters included United Parcel Service, American Airlines, FedEx, Cargo Airline Association (CAA), National Air Carrier Association (NACA), Lynden Air Cargo, ATA, Northwest Airlines, Transport Aircraft Technical Services, and Continental Airlines.

1. Safety Benefits Don't Justify Rule

American Airlines, ATA, and Lynden Air Cargo commented that the rule was not justified in terms of safety. They pointed out that there has been no catastrophic accident directly attributable to WFD since the Aloha Airlines accident in 1988 and that the National Transportation Safety Board found that WFD was a contributory factor, but not the sole factor, in that accident.

In contrast, Boeing commented that issuance of this final rule would cast a broad safety net on airframe structural performance for those types of details the industry has determined may be susceptible to WFD. Boeing said this final rule would provide for the establishment of safe operational limits and the maintenance actions necessary to preclude WFD prior to reaching those limits.

There have been several instances of major structural failure in flight due to fatigue. Therefore the potential for catastrophic structural failure is significant. The FAA considers that this rulemaking is essential to prevent future accidents or incidents. In the past, industry practice for new airplane design certification has been to develop some level of understanding of structural fatigue characteristics up to the design service goal, but not beyond it. A significant number of airplanes being operated currently have already accumulated a number of flight cycles or flight hours greater than the original design service goal. As the existing fleet continues to age, the number of such airplanes will increase. Structural fatigue characteristics of airplanes are understood only up to a certain point consistent with the analyses performed and the amount of testing accomplished. Operation beyond this point without further engineering evaluation should not be allowed because, in the absence of intervention, the likelihood of WFD increases with the airplane's time in service.

2. Existing Programs Serve Purpose of Rule

United Parcel Service, American Airlines, the CAA, ATA, Transport Aircraft Technical Services Company, and Lynden Air Cargo recommended that the proposed rule be withdrawn because existing programs serve the same purpose as an inspection program for WFD. These commenters were referring to existing elements of the Aging Aircraft Program, which resulted from the Aloha Airlines accident. They include the following:

- Supplemental Structural Inspection Program,
- Mandatory Modification Program,
- Repair Assessment Program,
- Corrosion Prevention and Control Program.

In addition, the FAA has issued airworthiness directives to address aging airplane safety concerns. Lynden Air Cargo and Transport Aircraft Technical Services Company said that the Aloha Airlines accident might not have happened if proper accomplishment and FAA oversight of the maintenance program had been performed.

The FAA recognizes that the four elements of the Aging Aircraft Program have some inherent ability to detect multiple site damage or multiple element damage, but existing inspection methods cannot detect such damage reliably. As acknowledged by some of the commenters, these four elements were not specifically designed to address WFD; they were designed as elements of an overall program to address structural degradation on the pre-Amendment 25–45 airplanes over 75,000 pounds maximum takeoff gross weight, commonly known as the "elite eleven." [15] This final rule, which specifically addresses WFD, is intended to be the last element of the overall Aging Aircraft Program.

The AAWG, of which several of these commenters were members, recognized the inadequacy of existing programs to address WFD when it submitted its recommendation for FAA rulemaking on this subject in 2001. The recommendation included the following discussion:

> Regulatory and industry experts agree that, as the transport airplane fleet continues to age, eventually WFD is inevitable. Long-term reliance on existing maintenance programs, even those that incorporate the latest mandatory changes introduced to combat aging, creates an unacceptable risk of age-related accidents. Even with the existing aging airplane program for large transports in place, WFD can and does occur in the fleet. Therefore, the FAA has determined that, at a certain point of an airplane's life, the existing aging airplane program is not sufficient to ensure the continued airworthiness of that fleet of airplanes.

As discussed previously, the FAA has issued approximately 100 airworthiness directives to address unsafe conditions due to WFD on a number of airplanes. Airworthiness directives are reactive in the sense that the agency issues them only after determining that an unsafe condition exists in one or more airplanes and is likely to exist or to develop in other airplanes of the same type design. Typically, unsafe conditions associated with WFD or its precursors have been discovered largely by chance by people performing unrelated airplane maintenance.

The FAA concludes that the agency cannot rely on existing programs—including issuing airworthiness directives if the FAA learns of an unsafe condition—to detect or address WFD that occurs in aging airplanes. These programs do not obviate the need for a rule to prevent catastrophic accidents due to WFD. This final rule specifically addresses WFD and its precursors by requiring design approval holders to evaluate their airplanes for WFD to prevent development of unsafe conditions.

Although maintenance program oversight can always be improved, the

holders under this rule, this final rule makes those LOVs applicable to the affected airplanes, and § 91.403(c) requires operators to comply with them.

[15] The elite eleven are the original models considered under the Aging Aircraft Program. These were airplanes over 75,000 pounds, operating under part 121 or 129, that were at a greater risk for age-related structural problems because they had high-time airplanes that were near or over their design service goals. They include the Airbus A300, Boeing 707/720, Boeing 727, certain Boeing 737s, certain Boeing 747s, McDonald Douglas DC–8, DC–9/MD–80, and DC–10, Lockheed L–1011, Fokker F–28, and the BAC 1–11.

fact remains that WFD is difficult, if not impossible, to detect. Small cracks that can lead to WFD often cannot be detected until they suddenly increase in size and "link up," to cause catastrophic damage. Dramatic crack growth can occur quite suddenly and quickly, after being undetectable for long periods of time. That is why maintenance inspections cannot be relied on to detect and repair such cracking. Airplane maintenance programs include inspections that are designed to detect obvious damage and irregularities. WFD, by its nature, is usually hidden, and not readily detectable. Discovery of WFD in some airplanes by mechanics has been a purely random occurrence, where damage detected was the result of WFD that had progressed to the point of failure of structural members. An example is discovery of WFD on a Boeing 747, with adjacent frame cracking and separations. It was detected because of loose rivets on the skin. Mechanics happened upon the WFD damage by chance, because inspections had not uncovered any problem. Improving a maintenance program by adding or modifying inspections would not necessarily have the effect of improving detection of WFD. In general, the only way to address WFD is by modifying or replacing structure.

The National Transportation Safety Board report stated the following:

> It is probable that numerous small fatigue cracks in the lap joint along S–10L joined to form a large crack (or cracks) similar to the crack at S–10L that a passenger saw when boarding the accident flight. The damage discovered on the accident airplane, damage on other airplanes in the Aloha Airlines fleet, fatigue striation growth rates, and the service history of the B–737 lap joint disbond problem led the Safety Board to conclude that, at the time of the accident, numerous fatigue cracks in the fuselage skin lap joint along the S–10L linked up quickly to cause catastrophic failure of the large section of the fuselage.

The AAWG worked on various solutions to the safety problems encountered by aging airplanes and was instrumental in developing the four programs listed earlier in this document. However, they decided that additional actions were needed to preclude WFD in airplanes, and the steps they outlined included:

- Setting limits of validity of the maintenance program.
- Deciding whether WFD can be inspected for, and, if so, for how long such inspections would be effective.
- Defining when WFD-susceptible structure should be modified or replaced.

Lynden Air Cargo stated that it supported an approach that used airworthiness directives to address WFD-susceptible structural components instead of an LOV approach for the entire airplane. Lynden Air Cargo further stated that the unique design of the L–382G allows for the whole airframe to be renewed by replacing WFD-susceptible sections (*e.g.,* center wing and outer wing).

The FAA agrees with Lynden Air Cargo that WFD-susceptible structure can be replaced when the engineering data determines it should be replaced to preclude WFD. However, as airplanes age, other areas may also need to be replaced. The only way to determine that is to evaluate the engineering data (analyses, tests, service experience) for the entire airplane. Without the LOV, the operational life of an airplane is undefined. As a result, the list of areas to inspect, modify, replace, or any combination of these may be extensive, since the data would need to substantiate an indefinite life.

3. Divide Rule into Two

FedEx, Northwest Airlines, Continental Airlines, NACA, and ATA stated that the proposed draft final rule does not allow the public an opportunity to comment on the LOVs that design approval holders propose as compliance to part 26. They suggested the rule be divided into two rules: one for design approval holders and one for operators. The commenters noted that this two-step process would provide the public the opportunity to comment on design approval holders' proposed LOVs. Deferral of the operator rule would also allow for public comment on the WFD maintenance actions at the same time LOVs are established. In support of this approach, FedEx specifically argued that the incremental costs for the part 26 work to design approval holders is minimal, as design approval holders have confirmed in their comments to this docket.

The FAA has determined that complementary, concurrent requirements for design approval holders and operators are necessary to achieve the safety benefits of the proposed rule in a timely manner. Although design approval holders would be required to develop LOVs for affected airplanes under part 26, the safety benefit for this rulemaking initiative is not met until operators incorporate LOVs and only operate airplanes up to the point in time for which it can be shown that the airplane will be free from WFD. Until design approval holders actually comply with part 26, it's not possible to identify the precise LOV for any particular airplane. However, operators have had adequate general notice of the objectives of this rulemaking and the proposed methods for achieving those objectives in the form of the design approval holders' anticipated LOVs. Since the public meeting, both Boeing and Airbus have provided revised information about where they anticipate those LOVs will be set.

If additional, multiple rulemakings are necessary to require operators to incorporate LOVs into their maintenance programs, there is a risk of airplanes exceeding LOVs before those rules become effective. The FAA concludes that, to achieve our safety objectives, design approval holders and operators must have a shared responsibility on certain safety issues affecting the existing fleet. We also conclude, from reviews such as the Commercial Airplane Certification Process Study (March 2002), that we need to facilitate more effective communication of safety information between design approval holders and operators. As both technology and airworthiness issues become more complex, certain fleet-wide safety issues require the FAA to implement complementary requirements for design approval holders and operators, when appropriate.

C. Concept of Operational Limits

This final rule requires design approval holders to establish limits of validity of the engineering data that supports the maintenance program. The proposed rule would have required that design approval holders establish initial operational limits beyond which airplanes may not be operated. The initial operational limit would be based on the demonstration of freedom from WFD up to that initial operational limit.

Several commenters supported the concept of early detection of WFD for aging airplanes but opposed the requirement to establish initial operational limits beyond which the airplanes could not be operated. These commenters equated establishment of such limits with mandatory retirement of airplanes and suggested that, instead, the FAA enhance current maintenance programs and practices.

1. Requests for Requiring Maintenance Programs Instead

An aircraft leasing and trading company named AWAS recommended that an inspection-based maintenance program become mandatory as airplanes reach their design service goal or their operational limit. Lynden Air Cargo stated that there are better, less intrusive

methods to achieve early detection of WFD than the "application of onerous initial and extended operational limits." According to the commenter, these methods include proper establishment, accomplishment, and enforcement of current airplane maintenance programs, such as the maintenance programs required by parts 121 and 135. Lynden Air Cargo said it is continuously revising its Continuous Airworthiness Maintenance Program to include a design approval holder inspection program of Structural Significant Items and recommended structural service bulletins.

These commenters raise some of the same issues as did those who opposed the rule altogether. They suggest that current programs for aging airplanes or new maintenance programs to detect WFD—along with issuance of airworthiness directives when WFD is detected—would obviate the need for setting operational limits.

As stated in the NPRM, the structural fatigue characteristics of airplanes are only understood up to a point in time consistent with the analyses performed and amount of testing accomplished. Structural maintenance programs are designed with this in mind. The LOV is defined as the limit of the engineering data that supports the structural maintenance program and the current regulatory maintenance requirements of parts 121 and 129 do not require that WFD be specifically addressed.

Also as discussed previously, WFD cannot be detected reliably by existing inspection methods. Therefore, the FAA considers that WFD in existing airplanes needs to be proactively addressed by requiring design approval holders to use relevant engineering data to project the number of flight cycles or flight hours or both which the airplanes can accumulate without incurring WFD. The engineering data may include the evaluation and establishment of maintenance actions that address WFD.

2. Single Retirement Point for a Model

The Modification and Replacement Parts Association (MARPA) opposed a single, mandatory retirement age for airplanes because of the "vast differences possible between aircraft models, missions, and maintenance." In a similar vein, a company named Safair, which is based in South Africa, commented that the difference in structural integrity of aging airframes lies in their use and abuse during their lives and is largely dependent on the specific load factors to which the airframe is subjected. Safair added that the proposed rule may be based on inadequate technical evaluation of the actual operational experience, considering the number of older aircraft that have been safely operated well beyond the actual cycles listed in the proposed rule.

It is true that there may be differences between airplanes of the same model which reflect differences in use and maintenance by different operators. When manufacturers design an airplane, they consider the various ways it may be used, and they develop a "mission profile" to account for the different loads the airplane may be subjected to that must be addressed in their design. In setting the LOV, manufacturers will take this information into account, along with service experience of the particular airplane model and fatigue test evidence. The LOV must apply to an airplane model, because it is based on analysis of the service experience of the entire fleet of affected airplanes.

3. Potentially Adverse Effect on Safety

Lynden Air Cargo, MARPA, and the airplane leasing and trading company AWAS also suggested that mandatory retirement of airplanes may have an adverse effect on safety which has not been considered by the FAA. Specifically, AWAS envisioned that operators of airplanes approaching their operational limit may perform minimal maintenance on airframes to save money. MARPA said that mandatory retirement could have a negative influence on the degree and timing of safety-related investment, particularly as the aircraft nears its "throwaway years." The owner and operator may not intend to be unsafe, suggested MARPA, but the question "Why invest now?" will arise. A similar comment from Lynden Air Cargo anticipated that operators "are unlikely to apply the same level of maintenance effort for an airplane 1,000 flight hours from the scrap heap as one with 20,000 flight hours remaining."

Under existing operating rules, operators are responsible for maintaining their airplanes in an airworthy condition. These maintenance requirements apply equally to new and old airplanes. Even without this final rule, operators have always planned to retire airplanes, and service experience indicates that they generally continue to maintain them safely up to that point. The purpose of this final rule is to ensure that airplanes are retired before the point where they can no longer be safely maintained with respect to WFD.

D. Change in Terminology (Initial Operational Limit to LOV)

1. Rationale for the Term LOV

The NPRM proposed to establish an initial operational limit, expressed in flight cycles, flight hours, or both, beyond which an airplane could not be operated. Several commenters, including industry representatives on the AAWG and Boeing, objected to this term and suggested that instead the FAA refer to the "limit of validity of the engineering data that supports the maintenance program," or LOV. This final rule uses the term LOV to express the point beyond which an airplane cannot be operated (unless an extended LOV has been approved).

In recommending that the FAA refer to the "limit of validity of the engineering data that supports the maintenance program," or LOV, industry representatives on the AAWG stated that the term "initial operational limit" implies that the use of an airplane is limited in operation. According to the commenters, the limitation is actually based on the engineering knowledge of the structural behavior of the airplane model and is intended to ensure that required inspections are sufficient to ensure safe operations until a certain number of flight cycles or flight hours or both have been reached. The engineering data that support such inspection requirements change with time due to knowledge gained from in-service experience and additional testing.

Boeing defined LOV as the point (usually measured in flight cycles) in the structural life of an airplane where the engineering basis for the maintenance actions contained in the Airworthiness Limitations section of the Instructions for Continued Airworthiness is no longer a valid predictor of future structural behavior.

Our intent, as stated in the NPRM, was to ensure that large transport category airplanes not be operated beyond their initial operational limit, unless operators had incorporated an extended operational limit and the service information necessary to support it into their maintenance programs. Just as the structural fatigue characteristics of airplanes are understood only up to a point consistent with analyses performed, testing accomplished, and in-service experience gained, the engineering data used to develop inspections and modifications to preclude WFD is valid only to a certain point.

For these reasons, the FAA finds the term "limit of validity" more appropriate than the term "initial operational limit"

in defining the point to which an airplane may be safely operated in relation to WFD. The LOV is substantiated by test evidence and analysis. This test evidence and analysis may be augmented by service experience, or by service experience and teardown inspection results, if available. The service experience and teardown inspection results must be for high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures. Additional engineering data would be necessary to support operation of an airplane beyond the LOV. The legal effect of the terms initial operational limit and limit of validity is the same. Therefore, this final rule uses the term limit of validity instead of the term initial operational limit.

2. Refer to the Structural Maintenance Program

Airbus stated that the term limit of validity of the engineering data that supports the maintenance program should be revised for clarification. Because WFD is addressed by performing inspections or modifications or replacements of airframe structure, the phrase "maintenance program" should be changed to "structural maintenance program."

The FAA agrees with Airbus and that change is reflected here.

E. Repairs, Alterations, and Modifications

This final rule requires design approval holders to establish LOVs for airplane models subject to this rule. However, it does not include separate requirements to address WFD for repairs, alterations, and modifications to those airplanes or to develop guidelines to address repairs, alterations, or modifications. The proposed rule would have required evaluation of repairs, alterations, and modifications of the baseline structure of the airplane. The proposed rule would have also required development of guidelines for repairs, alterations, and modifications. Persons repairing or altering airplanes certified to § 25.571 at Amendment 25–96 or later are already required to show the repair or alteration to be free from WFD up to the airplane's design service goal. This requirement has not changed since adoption of Amendment 25–96 in 1998.[16]

1. Whether Repairs, Alterations, and Modifications Pose WFD Risks

The Technical Document, discussed earlier, stated that the FAA, in response to comments, had removed the proposed requirements for repairs, alterations, and modifications. In response to the Technical Document, Lynden Air Cargo, Northwest Airlines, ATA, Continental Airlines, and FedEx stated that they support removal of requirements for repairs, alterations, and modifications from the draft final rule. These commenters stated that repairs, alterations, and modifications present a reduced risk for WFD because they will be surveyed and assessed under the Aging Airplane Safety Final Rule and the Damage Tolerance Data for Repairs and Alterations Rule (hereafter referred to as the Damage Tolerance Data Rule).[17] Commenters often used the term "Aging Airplane Safety Rule" to refer to the Damage Tolerance Data Rule or the Aging Airplane Safety Final Rule, or both. In instances where this occurs, to avoid confusion, the name of the specific rule has been inserted in parentheses.

These commenters expressed the belief that a new WFD requirement for repairs, alterations, and modifications is unnecessary because of these other requirements, which are already in place. Lynden Air Cargo stated that, although it supports removal of requirements to evaluate repairs, alterations, and modifications for WFD because the Damage Tolerance Data Rule already adequately addresses them, it does not understand how each design approval holder is going to establish the validity of its maintenance program without validating the repairs and alterations it has established under that program. Northwest Airlines said that it supported the conclusion of the AAWG that the costs of including repairs, alterations, and modifications in the rule outweighed the benefits that such a requirement would have.

Boeing, Airbus, and the European Aviation Safety Agency (EASA) said the FAA should reconsider its decision to remove from the rule the requirements for evaluating certain repairs, alterations, and modifications. All three commenters stated that removing those requirements could affect safety because certain alterations could affect the LOV and the structural maintenance program that supports the LOV. An example of an alteration that could affect the LOV and structural maintenance program, the commenter maintained, is one that would cause a global loading increase, such as an alteration allowing a higher cabin differential pressure. Airbus stated that, although the Changed Product Rule (14 CFR 21.101) may address future alterations and modifications, it does not cover existing ones.

Boeing recommended that the FAA revise subpart E of part 26, the Damage Tolerance Data Rule, for repairs and alterations, and §§ 121.1109 and 129.109, the Aging Airplane Safety Final Rule, to include requirements for evaluating repairs, alterations, and modifications for WFD. Boeing's recommendation contains two parts. First, it requests that the FAA extend the compliance date for both rules by 18 months after the effective date of the WFD rule. Second, it says the FAA should incorporate the 2007 ARAC recommendations on evaluating repairs, alterations, and modifications into those rules.

Boeing, Airbus, EASA, and the Allied Pilots Association (APA) stated that *certain* repairs, alterations, and modifications need to be evaluated for WFD. APA stated that eliminating the requirement to evaluate WFD associated with most repairs, alterations and modifications from the final rule is risky, because many high-time airplanes fall into this category and will not have any current analysis done on their modified airframes.

In its final report to ARAC concerning Task No. 3, the AAWG stated that it has reviewed the accident record and has observed that—while there is a technical possibility of a WFD-related accident involving a repair or alteration—there are no recorded accidents attributed to WFD occurring in properly-installed repairs or alterations. The group added that a review of certain repairs, alterations, and modifications is necessary, because some of them have the potential to develop WFD.

The FAA agrees with the commenters that some repairs, alterations, and modifications may pose a risk of developing WFD. However, the risk appears to be less than that for baseline airplane structure because all adverse service experience to date has been limited to baseline airplane structure. Type certificate holders design repairs, alterations, and modifications using the same design philosophies and load cases as for baseline airplane structure. As they do with the baseline airplane structure, type certificate holders re-evaluate their repairs, alterations, and modifications as service experience is gained. Therefore, these repairs, alterations, and modifications should be acceptable up to the LOV.

The repairs, alterations, and modifications developed by persons other than type certificate holders may present a slightly greater risk, because those persons typically do not have the

[16] March 31, 1998, 63 FR 15708.

[17] 72 FR 70486, December 12, 2007.

type certificate holder's data or expertise. Although those repairs, alterations, and modifications may pose a higher risk for developing WFD, there are no recorded accidents attributed to WFD occurring in these repairs, alterations, and modifications. Nor have there been a significant number of findings of multiple site or element damage associated with them.

The FAA is funding additional research at the agency's Technical Center to get a better understanding of these risks and how to address them.[18] This research includes conducting a field survey of repairs, alterations, and modifications on high-time airplanes to document the existing configurations. The research also includes removing some repairs, alterations, and modifications to further evaluate their condition. In some cases, testing of particular structure may be performed to obtain data for calibration and validation of methodologies for predicting WFD. If this research demonstrates that additional actions are needed to address risks for repairs, alterations, and modifications, the FAA will consider further rulemaking.

Based on the above, the FAA has re-evaluated the NPRM and determined that the proposed requirements to address repairs, alterations, and modifications should be removed from the final rule.

2. Relationship to Damage Tolerance Requirements (§ 25.571)

a. Pre-Amendment 25–96 Airplanes

The FAA received numerous comments requesting that the proposed requirements for repairs, alterations, and modifications in the NPRM and the related proposed requirements of the Damage Tolerance Data Rule NPRM[19] be combined and aligned in a single rulemaking. These commenters included industry representatives who are members of the AAWG,[20] the ATA, Boeing, Airbus, Cessna, and American Airlines. They were concerned that separate requirements for repairs, alterations, and modifications in the Aging Airplane Safety Rule (the Damage Tolerance Data Rule) and the NPRM for this rule would require duplicative efforts.

Given the proposed timeframes for compliance and the shortage of qualified industry resources to perform the required analyses, the commenters suggested that separate requirements are unnecessary and could not be accomplished within the proposed compliance times. The industry representatives on the AAWG stated that there are fewer than 50 persons in industry who are qualified to perform damage tolerance and WFD assessments and most of them are employed by the major design approval holders.

The AAWG stated in its final report on Task 3 that existing alterations and repairs would receive a damage tolerance assessment under the Aging Airplane Safety Final Rule (developed under the Damage Tolerance Data Rule).[21] The report indicated that this should provide an improved level of safety because repairs, alterations, and modifications would be surveyed and evaluated. The AAWG recommended that repairs not be re-reviewed for WFD if they had already been reviewed for damage tolerance.

Since adoption of Amendment 25–45 in 1978,[22] the damage tolerance provisions of § 25.571 have required consideration of damage at multiple sites, the precursor for WFD. While recent efforts on damage tolerance have focused on localized cracking, in most cases the design approval holders have addressed multiple site damage in their design of both baseline structure and of repairs, alterations, and modifications, even if indirectly. As a result, the FAA agrees that damage tolerance assessment of repairs, alterations, and modifications should provide some degree of mitigation of risk, even though the focus of the assessments has been on developing inspections, and inspections cannot reliably detect WFD.

The FAA recognizes the scarcity of expert resources in the area of damage tolerance and WFD. By removing requirements to address repairs, alterations, and modifications from this final rule, the agency is allowing those resources to be focused on meeting the compliance dates for the Damage Tolerance Data Rule and addressing WFD in baseline airplane structure, where the risks are greater. The FAA has recently been providing training to its designees and to industry members regarding compliance with § 25.571 and the Damage Tolerance Data and Aging Airplane Safety Final Rules. In that training, we have provided additional guidance on performing a damage-tolerance evaluation to assess damage at multiple sites. Adoption of this final rule should also result in significant commitments from industry to develop resources with this expertise.

b. Airplanes Certified to Amendment 25–96 or Later

The Technical Document described the agency's intent to remove requirements for evaluating repairs, alterations, and modifications for WFD. Airbus requested that the FAA clarify that today's final rule will not negate those requirements for persons making repairs, alterations, or modifications to their airplanes certified to Amendment 25–96. As another option, Airbus requested that the WFD rule applicability not include Amendment 25–96 or later airplanes, because those airplanes are already certified to WFD requirements.

The FAA agrees that clarification is necessary for airplanes certified to § 25.571, Amendment 25–96 or later. Amendment 25–96 revised § 25.571 to require that full-scale fatigue test evidence[23] be developed to show freedom from WFD up to an airplane model's design service goal. Also, any person performing a repair, alteration, or modification to those airplanes must address WFD for the repair, alteration, or modification, and show compliance with those requirements. The newest airplanes, like the Airbus A–380, are certified to Amendment 25–96, but most other airplanes operating today are certified to an Amendment level prior to 25–96, and thus would not be required to comply with those WFD requirements. They would, however, be required to comply with the requirements of the Damage Tolerance Data Rule.

For today's rule, § 25.571 and Appendix H to Part 25 require that applicants show an airplane model to be free from WFD up to the LOV instead of to the design service goal. Unlike Amendment 25–96, which did not require the design service goal to be included in the Airworthiness Limitations section, this final rule mandates LOV placement in the Airworthiness Limitations section. The

[18] Task Area II, Project I, Survey of Transport Airplane Structural Repairs and Alterations, Statement of Work 064070723–1, dated October 23, 2007; FAA William J. Hughes Technical Center, Atlantic City, New Jersey. The Scope of Work for this research is available in the docket for this rule.

[19] 71 FR 20574, April 21, 2006.

[20] The companies represented are Boeing, Airbus, American Airlines, Northwest Airlines, US Airways, United Parcel Service, FedEx, ABX (previously known as Airborne Express), Continental Airlines, Japan Air Lines, United Airlines, and British Airways. Although the comments are not representative of the views of other members of the AAWG, including national authorities, for simplicity the source of these comments is identified hereafter as "industry representatives on the AAWG."

[21] The Damage Tolerance Data Rule is Amendment 26–1 and the Aging Airplane Safety Final Rule is Amendment 121–337 to the CFR.

[22] October 5, 1978, 43 FR 46238.

[23] Test evidence comprises full fatigue testing up to at least two times the proposed design service goal and may include, for derivative airplanes, analysis, service experience, or service experience and results of tear-down inspections of high-time airplanes, if available.

requirements of today's rule are similar to those of Amendment 25–96. Any person who repairs, alters, or modifies any airplane certified under today's rule must show that repair, alteration, or modification to be free from WFD up to the airplane's LOV.

3. Guidelines for Repairs, Alterations, and Modifications

Industry representatives on the AAWG and several other commenters recommended that proposed § 25.1807(g), along with §§ 25.1809 and 25.1813, be withheld until the working group completed relevant taskings from ARAC. In particular, the commenters stated that the guidelines in § 25.1807(g)(3) could not be technically accomplished because the design approval holders do not have the data or knowledge necessary to provide guidance for all possible repair or alteration configurations.

Boeing and Airbus commented that they could support WFD guidelines that are limited in scope. The guidelines should identify structure prone to development of WFD and provide processes and procedures by which operators can access valid data for complying with the rule. But these commenters said that such guidelines should not attempt to describe methods for determining when WFD is likely to occur or for developing service information to preclude WFD. The commenters objected to providing guidelines as defined under proposed § 25.1807(g)(3) because design approval holders would have no control over how the guidelines would be used. They further stated that such guidelines could expose design approval holders to potential liability if they are applied incorrectly.

When the FAA issued the NPRM, the agency was relying on the AAWG, under an ARAC tasking, to identify a means of compliance that would be practical for both design approval holders and operators. Although ARAC did not provide detailed recommendations for developing guidelines, it did provide a general approach.

Requirements pertaining to repairs, alterations, and modifications were included in the proposed rule to ensure that they would not degrade the level of safety provided by the design approval holder's compliance with the rule. Although the FAA has removed these proposed requirements from the final rule, the agency is engaged with industry in a number of activities to address these concerns.

For repairs, the AAWG recommended in its final report on Task 3 that each design approval holder update its publications (*e.g.,* structural repair manuals, service bulletins, and repair assessment guidelines) to include instructions for inspecting and, if necessary, modifying structure susceptible to WFD. This update should occur by the time the design approval holder has established the LOV for an airplane model. The AAWG recommended that design approval holders update their service documents for WFD at the same time they are revising these documents for the Aging Airplane Safety Rule (the Damage Tolerance Data Rule) if the WFD data are available. The FAA expects that design approval holders will fulfill this recommendation. To the extent that design approval holders update their service documents for WFD, operators, when complying with requirements of the Aging Airplane Safety Final Rule by using those updated service documents for repairs, will be addressing the WFD risks for these repairs. In addition, § 25.571 already requires consideration of the potential for WFD for repairs to airplanes certified to Amendment 25–96 or later.

For alterations, the AAWG surveyed 642 supplemental type certificates. Out of the 642, they identified only 14 alterations and modifications that would require assessment for WFD. Based on this, they suggested that the FAA review these types of existing alterations to determine whether any action is necessary. The Task 3 report did not specifically recommend that design approval holders address their alterations for WFD. However, recent meetings conducted by certain design approval holders indicate that they intend to address their own alterations and modifications for WFD in addition to repairs in the Task 4 [24] structures task group activity. The majority of transport airplanes operating in the U.S. that are subject to this final rule will be addressed by these design approval holders. We anticipate that other design approval holders will also review their alterations and modifications for WFD.

While these activities will not address alterations and modifications developed by other persons (including supplemental type certificate holders), as stated earlier, the FAA is conducting research to get a better understanding of the risks that repairs, alterations, and modifications may pose for developing WFD and whether they need to be assessed for WFD. If the FAA determines that the risks are unacceptable, the FAA will consider further rulemaking to mandate assessments.

This research may also assist in refining means of compliance with § 25.571, at Amendment 25–96 or later, for repairs, alterations, and modifications. For airplanes certified to Amendment 25–96 or later, persons who repair or alter the airplane must address WFD. This has typically been done by showing the repair or alteration to be adequate up to the airplane's design service goal. With adoption of this final rule, repairs, alterations, and modifications to airplanes designed in the future will have to be shown to be free from WFD up to the airplane's LOV.

4. Rely on the Changed Product Rule

Northwest Airlines stated that it supports the FAA in removing WFD requirements for most repairs, alterations, and modifications, but requested that references to future alterations be removed from the final rule and addressed by the Changed Product Rule, 14 CFR 21.101. The Changed Product Rule requires that significant changes to type-certificated products comply with the latest amendments of the airworthiness standards unless one of the stated exceptions applies. In support of its position, Northwest Airlines cited concerns published by the AAWG about industry not having the resources or sufficient FAA guidance to accomplish WFD analysis for the expected quantities of supplemental type certificate alterations.

Similarly, ATA stated that in view of their coverage under the Changed Product Rule, the FAA should exclude future supplemental type certificate applications from the applicability of this rule. Northwest Airlines and ATA requested that the FAA use the Changed Product Rule to regulate which future alterations would need to be evaluated for WFD.

The Changed Product Rule would require applicants for future alterations and modifications to include the latest

[24] Task 4.—Model Specific Programs.

Oversee the Structural Task Group (STG) activities that will be coordinated for each applicable airplane model by the respective type certificate holders and part 121 and 129 certificate holders. These STG activities will involve the development of model specific approaches for compliance with §§ 121.370a and 129.16 under the guidance material supplied in Task 1. As part of this tasking, the AAWG will identify those airplane models that do not have an STG, and will assess the need to form one (based on industry benefit). For those airplane models that will need to form an STG, the AAWG will initiate the coordination required to form the STG with the respective type certificate holder and/or part 121 and 129 certificate holders. In addition, the AAWG will support implementation of the action plan to address recommendations made in tasks 2 and 3 as determined necessary by the ARAC, Transport Airplane and Engine Issues Group, and concurred with by the FAA.

amendment of part 25 for § 25.571 in the certification basis for the proposed alteration or modification if the change is considered significant. For the purposes of today's rule, applicants would use the examples of significant changes identified in AC 21.101–1. For transport category airplanes, that AC may be used as a starting point for determining whether alterations or modifications are significant and must be evaluated to the latest amendment of § 25.571. Examples of significant changes from AC 21.101–1 that would be required to be assessed for WFD include passenger-to-cargo conversions, gross weight increases, and cabin pressure increases. We have revised AC 25.571–1X to provide additional guidance for identifying whether a change, or structure affected by the change, requires an assessment for WFD. Affected structure can be new structure installed by the change or existing structure modified by a change. Structure may be affected if it is physically changed or if there is a change or redistribution of internal loads. The long-term result will be that a changed product will have a certification basis that provides a similar level of safety to that provided by the certification basis of a new type certificate for the same product.

F. Compliance Times for Developing and Implementing LOVs

For existing airplanes, this final rule uses a phased approach for establishing LOVs and divides the compliance dates for holders of design approvals and applicable airplane models into three groups. The NPRM proposed that design approval holders establish LOVs for all affected airplanes by one specific date. The proposed rule did not account for the age of airplanes within a model.

For this final rule, the compliance dates for the different airplane groups are identified based on their certification basis relative to § 25.571 and are as follows:

- *Group I:* Pre-Amendment 25–45 airplanes (those with a certification basis dating before 1978). The Boeing 727 and the Airbus A300 are examples of pre-Amendment 25–45 airplanes.
- *Group II:* Amendment 25–45 up to but not including Amendment 25–96 airplanes (those with a certification basis dating from 1978 to 1998). This group of airplanes would include the Boeing 757 and 767 and the Airbus A318.
- *Group III:* Amendment 25–96 and later airplanes (those with a certification basis dating from 1998 to the present). The Airbus A380 and the Embraer ERJ 170 and 190 are among the airplanes that have this certification basis.

Table 1 in § 26.21 indicates the compliance times for these various groups of airplanes. They are 18, 48, and 60 months, respectively. These compliance times apply to all existing versions of these airplane models.

For airplane models for which a type certificate is approved as of the effective date, but which are not specifically named in Table 1 of § 26.21, an LOV must be established within 60 months after the effective date of the rule. In Table 1 of § 26.21, those airplanes would fall under the category of "All Other Airplane Models Listed on a Type Certificate as of January 14, 2011."

For type certificate or amended type certificate approvals that are pending as of this final rule's effective date, and for future amendments to existing or pending type certificates, this final rule requires the applicants to establish an LOV by the latest of the following dates:

- Within 60 months after the effective date of the rule,
- The date a certificate is issued, or
- The date specified in the plan approved under § 25.571(b) indicating when the full-scale fatigue testing and evaluation will be complete.

This final rule requires operators to incorporate the Airworthiness Limitations section that includes the LOV into their maintenance program within 30, 60, or 72 months after the effective date for Groups I, II, and III, respectively. Table 1 in §§ 121.1115 and 129.115 gives the compliance times for operators.

This final rule also requires operators of affected airplanes whose applications for type certificates or amended type certificates are pending as of the effective date, or whose application for a type certificate or amended type certificate is made after the effective date of the rule, to incorporate the Airworthiness Limitations section that includes the LOV into their maintenance program at the latest of the following compliance times:

- Within 72 months after the effective date of the rule,
- Within 12 months after the LOV is approved, or
- Before operating the airplane.

In Table 1 of § 121.1115 and § 129.115, those airplanes would fall under the category of "All Other Airplane Models (TCs and Amended TCs) not Listed in Table 2."

Amended or supplemental type certificates that change the maximum takeoff gross weight are grouped separately. Holders of amended type certificates or supplemental type certificates that increase the maximum takeoff gross weight to greater than 75,000 pounds, regardless of whether such change was applied for before or after the effective date of the rule, must comply within 18 months after the effective date of the rule. Applicants for this type of design change approval whose applications are either pending as of the effective date of this final rule or submitted after the effective date must comply by the latest of the following dates:

- Within 18 months after the effective date of the rule,
- The date the approval is issued, or
- The date specified in the plan approved under § 25.571(b) indicating when the full-scale fatigue testing and evaluation will be complete.

Applicants for amended type certificates or supplemental type certificates applied for after the effective date of the rule that decrease the maximum takeoff gross weight to 75,000 pounds or less must also comply by the latest of the following dates:

- Within 18 months after the effective date of the rule,
- The date the certificate is issued, or
- The date specified in the plan approved under § 25.571(b) indicating when the full-scale fatigue testing and evaluation will be complete.

This final rule requires operators of airplanes whose maximum takeoff gross weight was decreased to 75,000 pounds or below after the effective date of the rule or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate to incorporate the Airworthiness Limitations section that includes the LOV into their maintenance program by the latest of the following compliance times:

- Within 30 months after the effective date of the rule,
- Within 12 months after the LOV is approved, or
- Before operating the airplane.

Those airplanes would fall under the category of "Maximum Takeoff Gross Weight Changes" in Table 1 of § 121.1115 and § 129.115.

Under 14 CFR 91.403(c), no person may operate an airplane unless that person is in compliance with applicable airworthiness limitations. By requiring operators to incorporate the Airworthiness Limitations Section containing the LOV into the maintenance program, this final rule makes those LOVs applicable to the affected airplanes, and § 91.403(c) requires operators to comply with them.

Operators of airplanes whose type certificate was pending approval as of the effective date of the rule will be required to include one of the following

airworthiness limitations in their maintenance program:

- The LOV that has been specified in the Airworthiness Limitations section of the Instructions for Continued Airworthiness; or
- If the LOV has not yet been established, a number equal to ½ the number of cycles accumulated on the fatigue test article if a type certificate is issued prior to completion of full-scale fatigue testing.

Comments received during the NPRM comment period were responding to the one specific compliance date published in the NPRM. Comments received during the comment period for the Technical Document, which described changes that had occurred to the rule since it had been proposed in the NPRM, were in response to the phased compliance dates published in the Technical Document, which are the dates cited in today's rule.

1. NPRM Compliance Date

Commenters—including industry representatives on the AAWG, Cessna, Continental Airlines, Embraer, AWAS, the CAA, American Airlines, Boeing, Airbus, and FedEx—objected to the proposed compliance date of December 18, 2007, for both technical and practical reasons. Several commenters stated that hard compliance dates and an expected final rule issuance in December 2006 would leave design approval holders with less than 12 months to comply with the subpart I requirements (now part 26). These commenters requested that the FAA revise the compliance dates to represent a number of months after the effective date of the rule rather than a hard date. This approach would prevent the FAA's schedule for issuing the final rule from affecting compliance by design approval holders.

We have revised the compliance dates in this final rule to specify that persons must comply either by a date determined as a specified number of months after the effective date of the final rule or (for applicants) by the date of approval of the related certificate.

2. When to Set LOVs for Existing Airplanes

Industry representatives on the AAWG, Boeing, Continental Airlines, Northwest Airlines, ATA, Lynden Air Cargo, and FedEx stated that there should be a phased approach to setting LOVs, with the oldest airplane models being addressed first. The industry representatives on the AAWG suggested that existing airplane models subject to the rule be divided into two groups: (1) Pre-Amendment 25–45 airplanes and (2) airplanes certified to Amendment 25–45 or later. The commenters stated that performing WFD evaluations on airplane models before the high-time airplane reaches its design service goal, as proposed in § 25.1807 (now § 26.21) and as specified in the Technical Document, would not significantly increase operational safety. This is because WFD is typically not a concern until later in an airplane's operational life. As discussed earlier, these commenters objected to the proposed compliance date of December 18, 2007. Commenters also objected to the compliance times identified in the Technical Document—that is, 18 months for pre-Amendment 25–45 airplanes, 48 months for Amendment 25–45 up to but not including Amendment 25–96 airplanes, and 60 months for Amendment 25–96 airplanes.

Boeing said that the final rule should provide the greatest amount of time for design approval holders to develop LOVs, so that LOVs provide the greatest flexibility for the fleet. Several commenters argued that requiring compliance prior to or concurrent with the Aging Airplane Safety Rule (Damage Tolerance Data Rule) would not be practical because of limited industry and FAA resources. In addition, Boeing and Northwest Airlines argued that establishing an LOV for an airplane model before significant service experience had been accumulated would result in an erroneous LOV.

We agree that it makes sense to have compliance dates for establishing LOVs for existing airplanes based on the relative safety risk (*i.e.,* addressing the oldest airplanes first) and on available resources. However, the agency does not agree that "early" establishment of an LOV will result in an "erroneous" LOV. Setting an LOV without benefit of significant service experience might result in an LOV that sets the limit at a lower number of flight hours or flight cycles than one that benefits from significant service experience, but it would be incorrect to characterize it as "erroneous." This is because the LOV is a function of the fatigue knowledge base available at the time it is established.

a. Pre-Amendment 25–45 Airplanes

Industry representatives on the AAWG, Boeing, Continental Airlines, Northwest Airlines, ATA, and FedEx pointed out that the first group of airplanes is collectively at the highest risk because of cumulative time in service and the limited fatigue test data available for these models. They recommended that the compliance date for the first group of airplanes should be by a certain date after the effective date of the rule. The AAWG's final report [25] recommends that LOVs be established for the first group of airplanes by June 2009, or 18 months prior to the operator's compliance date for the final rule, whichever occurs later. This would also provide sufficient time for Structures Task Groups [26] including operators of affected airplanes, to participate in establishing the LOVs. A later Boeing comment, however, requested that the compliance dates for those airplanes be 36 months, instead of 18 months (as stated in the technical document), from the effective date of the rule. Boeing stated that this additional time would allow them to have the FAA review and accept the Boeing proprietary LOV methodology, prepare LOV fleet proposals, and coordinate them within Boeing and with operators before submitting them to the FAA for review and approval.

The FAA agrees that pre-Amendment 25–45 airplanes should be addressed first because they are among the oldest airplanes and at the highest risk for developing WFD. In fact, most high-time pre-Amendment 25–45 airplanes have exceeded their design service goals. While the FAA understands that LOVs have been developed for a number of affected airplanes, the agency also understands that not all design approval holders have begun or completed this activity on all affected models. The FAA recognizes the benefits of allowing Structures Task Groups to participate in setting LOVs. Therefore, the FAA has determined that the compliance period for the oldest affected airplanes should be increased to 18 months to allow sufficient time for design approval holders to show compliance with today's rule. This increases by six months the amount of time design approval holders have to comply over what was anticipated in the NPRM. The 2007 AAWG Task 3 Report further supports the compliance date of 18 months. In its report, the AAWG stated that most of the work for the pre-Amendment 25–45 airplanes has already been completed. As a result, we do not concur with the commenter that 36 months is necessary to establish LOVs.

[25] Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task, dated April 11, 2007.

[26] A Structures Task Group is a model-specific group that consists of type certificate holders and operators responsible for the development of aging airplane model-specific programs. It also includes regulatory authorities which approve and monitor those programs.

b. Airplanes Certified to Amendment 25–45 or Later

For the second group of airplanes (certified to Amendment 25–45 or later), industry representatives on the AAWG, Boeing, Continental Airlines, Northwest Airlines, ATA, and FedEx recommended setting a compliance date for design approval holders to establish LOVs that are tied to both the design service goal and the cumulative time on the high-time airplanes of that model. Specifically, the industry representatives on the AAWG proposed that within 180 days of the effective date of the rule, the type certificate holders provide design service goals for all affected airplane models to the FAA for approval. Once approved, these design service goals would be placed in an appropriate certification document. Other commenters—including Cessna, Continental Airlines, Embraer, AWAS, the CAA, American Airlines, Boeing, Airbus, and FedEx—agreed with industry representatives on the AAWG that the compliance date for setting LOVs should take into account both the design service goal and the cumulative time on the high-time airplanes of that model.

The industry representatives on the AAWG proposed that the design approval holder prepare a compliance plan with a binding schedule for a WFD evaluation when the high-time airplane reaches a point five years from its design service goal. The AAWG industry representatives suggested that a means of determining this time should be included in AC 120–YY. FedEx and Lynden Air Cargo suggested that the FAA use the design service goals that are being developed under the Damage Tolerance Data Rule to establish compliance dates for establishing LOVs and associated WFD maintenance actions. The commenters said that if no design service goal or design service objective exists, the LOV should be established when the high-time airplane of a particular model reaches 20 years of age.

In contrast, United Parcel Service and Technical Data Analysis, Inc. supported establishing LOVs for all affected airplane models as soon as possible, because of the uncertainty associated with estimating future operating costs and the length of time that airplanes can be operated.

The WFD risk for these newer airplane models is lower than for the pre-Amendment 25–45 airplanes because these airplanes are generally younger and have been certified to damage tolerance requirements. Therefore, the FAA agrees with the industry representatives on the AAWG and other commenters that the compliance times can be longer for these airplanes. On the other hand, the proposal of the AAWG industry representatives would add a level of complexity and uncertainty to determining compliance times that the FAA considers unnecessary and inappropriate and that would make operators' long-term planning difficult.

Therefore, as discussed earlier, to accommodate the need for a longer compliance time for these airplanes, this final rule creates three groups of airplane models for determining compliance dates.

- Group I—Pre-Amendment 25–45 (1978) airplanes.
- Group II—Airplanes certified to the requirements of § 25.571, Amendment 25–45, up to but not including Amendment 25–96 (1998).
- Group III—Airplanes certified to requirements of § 25.571, Amendment 25–96 or later.

Group II airplane models were all subjected to full-scale fatigue test programs. In addition, all the models in this group have been in service for a period of time. There should, therefore, be a reasonable knowledge base readily available on which to base an LOV. Today's rule requires establishment of an LOV for all these models within 48 months of the effective date of the rule, as indicated in Table 1 of § 26.21. This would allow design approval holders to schedule development of these LOVs after the more urgent development of LOVs for pre-Amendment 25–45 airplanes, so project schedules would not conflict. At the same time, this compliance time would ensure that LOVs are established long before the high-time airplanes of these models would reach their anticipated LOVs.

Design approval holders of those models in Group III have had to demonstrate or will have to demonstrate with sufficient full-scale test evidence that WFD will not occur within the design service goal of the airplane. Therefore, the design service goal would be a valid LOV that is based on the knowledge base considered. However, because these airplanes have not accumulated much time in service, there is less urgency in establishing an LOV. As a result, the final rule provides 60 months after the effective date of the rule to establish an LOV for these models. (*See* Table 1 of § 26.21.) This provides time to re-evaluate the fatigue data and to establish an LOV which may exceed the design service goal. Extending the compliance date for Group III airplanes beyond the compliance date for Group II airplanes reduces the resource concerns about developing LOVs for multiple airplane models at the same time.

Table 1 of § 26.21 includes a compliance date for airplanes that do not appear in the table but may have had a type certificate approved by the effective date. These have a compliance period of 60 months. Some type certificates are pending and may be approved shortly. This last row of the table is meant to capture any additional airplanes that fit the applicability criteria of § 26.21(a).

Table 1 of § 26.21 is used to call out existing airplanes and assign compliance dates. Holders of type certificates for these models must comply with § 26.21(c)(1). The remainder of § 26.21(c) specifies additional people who must comply.

Under today's rule, the compliance times specified in § 26.21(c) for when applicants must establish an LOV include the date specified in the applicant's plan for completion of the full-scale fatigue testing and analyses of the testing to demonstrate compliance with § 25.571(b).[27] All applicants who must comply with § 26.21 may use this date as one option for compliance.

Applicants who have the same compliance times and the option to use the date specified in the § 25.571(b) plan are:

- Applicants for type certificates for which the application is pending as of the effective date.
- Applicants for amendments to type certificates (with the exception of those that change the weight of the airplane).

All of these applicants are required to establish LOVs at the latest of the following dates:

- The date the type certificate or amended type certificate is issued,
- Within 60 months after the effective date of the rule, or
- The date specified in the plan approved under § 25.571(b) indicating when the full-scale fatigue testing and evaluation will be complete.

Among these applicants, WFD is of less immediate concern because their high-time airplanes will have accumulated relatively few flight cycles or flight hours by the compliance date. Establishing LOVs early in the service life of these airplanes will assist operators in their long-term planning. This approach also serves as a transition to § 25.571 as amended by this final rule, which requires establishing LOVs as part of initial type certification.

[27] Under § 21.17, these applicants are subject to § 25.571 at Amendment 25–96. In addition to this certification basis, they are subject to the requirements of this final rule.

Maximum takeoff gross weight changes to an airplane are treated separately in this rule. Holders of either supplemental type certificates or amendments to type certificates that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds must comply no later than 18 months after the effective date.

Applicants for supplemental type certificates or amended type certificates that increase the maximum takeoff gross weight to greater than 75,000 pounds must comply by the latest of the following:

- Within 18 months after the effective date of the rule,
- The date the certificate is issued, or
- The date specified in the plan approved under § 25.571(b) indicating when the full-scale fatigue testing and evaluation will be complete.

The option of 18 months after the effective date as a compliance choice for this group represents a six-month increase in the time to comply over what was originally proposed. We based these compliance dates on the length of time given for design approval holders of Group I airplanes to comply.

The NPRM did not specify a compliance time for applicants for design change approvals that, after the effective date of the rule, decrease the maximum takeoff gross weight to 75,000 pounds or less. This is because the applicability provision in the NPRM included airplanes with maximum takeoff gross weights exceeding 75,000 pounds, as approved during the original type certification. By referencing the capacity resulting from original type certification, the NPRM required applicants to establish LOVs for design change approvals that, after the effective date of the rule, decrease the maximum takeoff gross weight to 75,000 pounds or less. Although not explicitly stated in the NPRM, the LOV for those airplanes is required to be established by the compliance date for the original type certification or, in the case of applicants, by the date the approval of the design change has been issued. Because the NPRM was not clear about when those applicants must comply, the FAA has revised today's rule. Applicants for design change approvals that decrease the maximum takeoff gross weight to 75,000 pounds or less after the effective date of the rule must comply within 18 months after the effective date of the rule or by the date the certificate is issued or by the date specified in the plan approved under § 25.571(b), whichever occurs latest.

The FAA has also revised the compliance times to require those applicants who would decrease the gross weight of their airplanes after the effective date of the rule to submit a compliance plan within 90 days after the date of application.

3. Varying Implementation Strategies

APA suggested a way to address concerns about the time needed to develop an LOV. The commenter stated that the initial LOVs under consideration, as defined in the Technical Document, appear to be extremely liberal and based on limited data and minimal analysis. APA assumed that manufacturers would need more time to develop their analysis procedures, and said that a better approach for establishing the initial LOV would be to increase the design service goal by 10% to 15% and mandate inspections of high-time airplanes that are over their design service goal. APA based its suggestion on an assumption that the design service goals were based on hard test and engineering data. The commenter suggested halving the interval between maintenance checks for airplanes over their design service goal. Then, the commenter suggested, results of these inspections could be given to the manufacturer for use in substantiating the engineering WFD analysis. This data could be used to validate future incremental LOV increases.

Although this commenter maintained that design service goals are based on hard test and engineering data, that has not always been the criteria by which design service goals have been set. Amendment 25–96 to § 25.571 introduced requirements that applicants show freedom from WFD up to the design service goal. Prior to Amendment 25–96, however, there was no requirement for setting a design approval holder's design service goal or for validating it. Design approval holders have always used engineering data to substantiate their designs. Most design approval holders set design service goals for their airplanes, even though they were not required to do so. But since there were no requirements prior to Amendment 25–96 about what criteria must be used to set the design service goal, they have often been set for purposes driven more by sales and marketing than by engineering data.

Some design approval holders have stated that LOVs may be established at a point anywhere from 33% to 180% higher than the airplane's design service goal for certain models. This is because, for those design approval holders, there is a large body of in-service data to support these higher LOVs. Other design approval holders have taken an approach similar to APA's recommendation, in that they have been incrementally increasing their airplane model's LOV as the data supports it. Today's rule allows for an implementation strategy that provides flexibility to design approval holders in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes. However, no matter how the design approval holder chooses to manage LOV development, those LOVs must still be substantiated by engineering data.

4. FAA Review and Approval Time

Industry representatives on the AAWG, Boeing, Airbus, and CAA requested that the rule include required time periods for FAA review and approval activities. These commenters noted that the rules do not currently limit the amount of time the FAA will take to review and approve documents and that this will negatively affect their compliance time. Several commenters also noted that the amount of time the FAA will take to review and approve design approval holders' LOVs could reduce operator compliance time significantly.

We are not including required time periods for FAA review and approval of the required compliance activities. Instead, expectations for FAA personnel have been defined in FAA Order 8110.104, which directs the Aircraft Certification and Flight Standards Services in their roles and responsibilities for implementing these initiatives. The order includes expected times (6 weeks) for reviewing and approving design approval holder compliance plans, plans to correct deficiencies, and draft and final compliance data and documents. To facilitate implementation, the FAA will train affected personnel in their roles and responsibilities and provide in-depth familiarization with requirements of the regulations and associated guidance. Ultimately, however, the timing of FAA approvals will be determined by the quality of the design approval holder submissions and their responsiveness to issues raised by the FAA.

We have structured the requirements of the design approval holder rule and developed complementary guidance to facilitate timely review and approval of design approval holder submittals (such as compliance plans). An increase in operator compliance time would help ensure that operators are not affected by the FAA review and approval process. We have revised the WFD compliance

date for operators from 6 months to 12 months after the relevant design approval holder compliance date. This date is measured after the effective date of the final rule. As previously noted, for Group I, II, and III airplanes, the operator compliance dates are 30, 60, and 72 months, respectively, after the effective date of the rule.

G. LOVs for Future Airplanes: § 25.571, Appendix H, and Operational Rules

This final rule revises § 25.571 to require that—

- An LOV be established that corresponds to the time during which it is demonstrated that WFD will not occur in the airplane structure, and
- The LOV be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529.

Except for the change in terminology from initial operational limit to LOV, these revisions to § 25.571 are as proposed in the NPRM.

For operators of airplanes type certificated in the future, this final rule relies on existing operational rules to require operators to include the airplane's LOV, which is established under § 25.571 of today's rule, into their maintenance/inspection programs. This requirement is the same as that which was proposed in the NPRM.

1. Opposition to Changes to § 25.571

Industry representatives on the AAWG and Airbus commented that no change is needed to § 25.571 because airplanes certified to Amendment 25–96 must be free from WFD until they reach the design service goal, and the design service goal must be declared in the appropriate certification document.

We recognize that § 25.571 at Amendment 25–96 requires full-scale fatigue test evidence to demonstrate freedom from WFD up to the design service goal. However, the current regulations do not require that the Airworthiness Limitations section include the design service goal as an airworthiness limitation, so operators would be permitted to operate airplanes beyond this goal indefinitely. Therefore, the FAA finds it necessary to revise § 25.571, as proposed, to require that full-scale fatigue test evidence be used to demonstrate freedom from WFD up to the LOV and that the LOV be included in the Airworthiness Limitations section. These changes are consistent with recommendations made in 2003 by the General Structures Harmonization Working Group, a separate working group within ARAC.

2. Change to Appendix H

Under § 25.571, the FAA may issue a type certificate for an airplane model prior to completion of full-scale fatigue testing. As stated in the NPRM, the FAA did not propose to change this provision because the FAA intends that operators be able to operate these airplanes while the design approval holder is performing fatigue testing. Today's rule retains the requirement of § 25.571 that—if a type certificate is issued prior to completion of full-scale fatigue testing—the Airworthiness Limitations section must include a number equal to ½ the number of cycles accumulated on the fatigue test article. As additional cycles on the test article are accumulated, the number may be adjusted accordingly. This number is an airworthiness limitation, and no airplane may be operated beyond it until the fatigue testing is completed and the LOV is established.

For consistency however, the FAA has revised paragraph (a)(4) of H25.4 to part 25 (Appendix H) to include a reference to the limitation that an airplane may accumulate a number of cycles not greater than ½ the number of cycles accumulated on the fatigue test article until such testing is completed.

3. When to Set LOVs for Future Airplanes

Industry representatives on the AAWG, Boeing, and American Airlines commented that design approval holders should not be required to establish an LOV for a future airplane until the high-time airplane approaches its design service goal. United Parcel Service, on the other hand, recommended that the initial LOV be established during the initial certification process, and before the first airplane enters service. The ATA recommended that LOVs should be estimated at the time of airplane certification but should be reassessed when the high-time airplane approaches 75% of the estimate.

The LOV is a function of the fatigue knowledge base available at the time it is established. There should be sufficient data to establish an LOV for a new airplane model being certificated once full-scale fatigue test evidence is completed and assessed, normally several years after the airplane enters service. We agree that an LOV established for a new airplane model could be reassessed later when service information could be used with other data necessary to extend the LOV. Eliminating the requirement to address repairs, alterations, and modifications will simplify the process for extending the LOV.

The FAA does not agree that establishment of an LOV for a future airplane model should wait until the high-time airplane approaches its design service goal. As discussed previously, establishing design approval holder compliance dates that are a function of when high-time airplanes reach their design service goal would introduce a level of complexity and uncertainty to the requirements of the operational rules that is unnecessary and inappropriate.

One manufacturer is already employing the concept of establishing LOVs based on the fatigue knowledge base available through the certification process. Airbus has already included an LOV in the applicable Airworthiness Limitations section approved by EASA for all of its models with the exception of the A340.

4. Operational Rules

For airplanes whose type certificate application is made after the effective date of this final rule, LOVs must be established by the date the certificate is issued or the date specified in the plan approved under § 25.571(b). The LOV will be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness and will apply regardless of how or by whom the airplane is operated.

As discussed above, the FAA may issue a type certificate for an airplane model before full-scale fatigue testing has been completed. In that case, the Airworthiness Limitations section of the Instructions for Continued Airworthiness must include a number equal to ½ the number of cycles accumulated on the fatigue test article. Under § 91.403(c), operators may not operate these airplanes beyond this number of cycles. Once the fatigue testing is completed and the LOV is established and approved, operators may revise this airworthiness limitation to include the LOV. This LOV will be higher than the airworthiness limitation specifying ½ the number of fatigue test article cycles.

H. How to Set LOVs

Section 26.21(b) of this final rule requires design approval holders to establish an LOV of the engineering data that supports the structural maintenance program. This LOV corresponds to the period of time, stated as a number of total accumulated flight cycles or flight hours, or both, during which the design approval holder is able to demonstrate that WFD will not occur in the airplane. This demonstration must include an

evaluation of airplane structural configurations and be supported by test evidence and analysis. If available, service experience, or service experience and teardown inspection results, may be added to the test evidence and analysis to provide additional substantiation. The service experience and teardown inspections must be of high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures.

The NPRM proposed in § 25.1807(b) [adopted here as § 26.21(b)] that holders of design approvals for existing airplanes subject to the rule be required to evaluate airplane structural configurations to determine when WFD was likely to occur for structure susceptible to multiple site damage or multiple element damage. The results of the evaluation were to be used to support establishment of an initial operational limit (now the LOV.)

The Boeing Company and industry representatives on the AAWG commented that proposed § 25.1807 would require an "evaluation" that is not adequately defined and that there are no objective criteria for establishment of an LOV. These deficiencies could result in establishment of an LOV based solely on analyses of structure susceptible to multiple site damage and multiple element damage, without consideration of more relevant and reliable data, such as test evidence and service experience. These commenters concluded that, in these circumstances, airplanes could be operated well past the point to which the engineering data supports safe operation.

The commenters recommended that the required evaluation explicitly include the following tasks, which are described in the AAWG's 2003 report [28] as necessary to establish or extend an LOV.

1. Ensure that the basics of the Aging Aircraft Program are in existence.
2. Collect data necessary to extend fatigue test evidence.
3. Perform analysis of the structure for multiple site damage and multiple element damage.
4. Create and update maintenance documents to include maintenance actions and modifications for those areas where it has been predicted that multiple site damage and multiple element damage will occur before the proposed LOV.

In addition, industry representatives on the AAWG and Boeing recommended that the rule explicitly use the term "fatigue test evidence" to refer to the collective body of information that should be considered in establishing an LOV. The FAA agrees that the first task, having basics of the four elements of the Aging Aircraft Program in place,[29] is an important element for continued safe operation out to LOV. However, as discussed in the NPRM, this final rule does not include requirements related to those initiatives because they are already mandated by airworthiness directives, operational rules, and airworthiness limitations.

The FAA considers that tasks 2 and 3 are implicit in the text of the proposed rule but agrees that proposed § 25.1807 could be misinterpreted and result in too much reliance on results of analysis to preclude WFD up to the LOV. This was not our intent. In fact, as discussed in the NPRM, our intent was consistent with the AAWG's recommendations regarding WFD.

In response to these commenters, the FAA has revised the proposed rule to clarify how the LOV is to be established. This final rule specifies that—for an LOV to be acceptable—the supporting evaluation must demonstrate that the fatigue characteristics and any specified maintenance actions for the airplane are sufficient to prevent WFD from occurring before the LOV.

The required demonstration typically involves an evaluation of the airplane structure to determine its susceptibility to WFD and, if the structure is susceptible, an evaluation indicating that WFD will not occur before the proposed LOV. The evaluation must be supported by test evidence and analysis. The design approval holder may augment the test evidence and analysis with any available service experience, or service experience and teardown inspection results of high-time airplanes. Service experience and teardown inspection results must be of airplanes of similar structural design and must account for differences in operating conditions and procedures. After seeing these changes to the rule as they were described in the Technical Document, Boeing stated that it supports the FAA's adoption of an airplane-level assessment of fatigue test evidence as the basis for both the determination and extension of LOV.

The FAA is using the term "test evidence" to align with the rule text of § 25.571 relative to WFD. Therefore, in the context of this final rule, test evidence is data derived from full-scale fatigue testing, which may be of the complete airplane, or of separate major sections of the airplane, or a combination of the two. The test evidence would be used to support the proposed LOV for an airplane model. The amount of test evidence required to show compliance would depend on where a design approval holder proposes to set an LOV and what data (such as test evidence or service experience) already exist.

For a new airplane model that is pending approval, there should be test evidence to address all WFD-susceptible structural areas of an airplane. The test duration should be at least two times the proposed LOV. The test evidence may be from prior full-scale fatigue tests performed by the applicant or others on similar structure. For derivative models, the applicant should compare the derivative model to the tested model. To use the test evidence from the original certification project or previous derivatives, the applicant should show that the derivative model does not significantly change the basic structural design concept, aerodynamic contour, and internal load distribution. Advisory Circulars 120–YY and 25.571–1X further describe considerations for when existing test evidence could be used.

For some older airplanes, fatigue test data may be limited to fuselage structure. This is because the pressurized fuselage has been considered to be the most fatigue-critical part of the airplane. The wing and empennage have typically been considered less critical and, as a result, relevant test data may not exist. However, for these same airplane models, significant service experience does exist. The FAA would accept a combination of test evidence and analysis as well as service experience as data to show compliance with this final rule.

For example, in the case of one of the pre-Amendment 25–45 airplane models, significant numbers of airplanes both in service and in storage have accumulated flight cycles in excess of the design service goal. For this model, there is significant existing test evidence for the fuselage, but very little for the wing. In this case, the FAA expects that demonstrating freedom from WFD for the wing would be based primarily on service experience; for the fuselage, it would be based primarily on service experience and test evidence. Advisory Circular 120–YY further describes considerations for when service experience could be used to supplement existing fatigue testing that is limited to certain major components of the airplane, such as the fuselage.

[28] AAWG, Widespread Fatigue Damage Bridge Tasking Report, July 23, 2003.

[29] Mandatory modification, corrosion prevention and control, supplemental structural inspection, and repair assessment.

The FAA has used the term "analysis" to include fatigue and damage tolerance analyses. Teardown inspections of in-service airplanes and fatigue test articles should be performed to the degree necessary to validate that the test evidence, analysis, and service experience are representative of the fatigue performance of the airplane out to the LOV. Design approval holders must explain in their certification plan how they intend to substantiate their proposed LOV. The FAA has revised AC 120–YY to provide further guidance on the steps to take for establishing an LOV.

As discussed in the NPRM, design approval holders are not required to identify and develop maintenance actions if they can show that such actions are not necessary to prevent WFD before the airplanes reach LOV. If they choose to establish LOVs that rely upon maintenance actions to prevent WFD before the LOV, they must identify those actions and, unless the necessary service information already exists, develop the service information in accordance with a binding schedule approved by the FAA. Those actions would then be mandated, not by today's rule, but by future airworthiness directives.

To be approved, the "binding schedule" for necessary maintenance actions must ensure that the service information is provided in a "timely manner." In the NPRM, the FAA explained that the purpose of this requirement was to enable the FAA to issue the necessary airworthiness directives in time to allow operators to accomplish these actions during normal maintenance. The intent is to allow design approval holders the flexibility to focus their efforts on initially developing service information on those maintenance actions that must be accomplished first. At the same time, the FAA expects design approval holders to devote sufficient resources to these efforts so that:

- The service information is available when the FAA needs it to initiate the airworthiness directive rulemaking process, including providing public notice and opportunity to comment; and
- The resulting airworthiness directives will provide sufficient compliance times so that the required actions can be accomplished without disrupting operators' normal maintenance schedules.

Airbus stated that the analysis is the driver for substantiating LOVs and that test evidence supports the analysis.

Analysis methods are used in combination with the engineering data to characterize WFD behavior to the degree necessary to determine if maintenance actions are required prior to the proposed LOV. As a result, test evidence and analysis are both required to demonstrate freedom from WFD. This is consistent with the existing requirements of § 25.571 at Amendment 25–96.

We agree that a design approval holder may not have both service experience and teardown inspection results available to use as part of its compliance data. We have modified the requirement so that a design approval holder may have either service experience or service experience and results of teardown inspections. The change is follows:

"This demonstration must include an evaluation of airplane structural configurations and be supported by test evidence and analysis at a minimum and, if available, service experience, or service experience and teardown inspection results, of high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures."

I. How To Extend LOVs

Proposed § 25.1811 provided that any person could apply to extend an operational limit, using a process similar to that for establishing the initial operational limit. The configuration to be evaluated would consist of not only all model variations and derivatives approved under the type certificate for which the extension is sought, but also all structural repairs, alterations, and modifications to those airplanes, whether mandated by airworthiness directive or not.

Section 26.23(b) of this final rule (proposed as § 25.1811) contains requirements for obtaining approval of an extended LOV that corresponds to the period of time, stated as a number of total accumulated flight cycles or flight hours or both, beyond an existing LOV during which it is demonstrated that WFD will not occur in the airplane. This demonstration must include an evaluation of airplane structural configurations and be supported by test evidence and analysis at a minimum and, if available, service experience, or service experience and teardown inspection results of high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures. Requirements for this section are the same as those for establishing an LOV. The FAA has removed the requirement to evaluate repairs, alterations, and modifications from § 26.23.

1. Change the Procedure for Extending LOVs

Industry representatives on the AAWG, ATA, Cessna, Airbus, United Parcel Service, FedEx, Boeing, and American Airlines stated that the means proposed in § 25.1811 for extending an operational limit is administratively difficult, impractical, and technically unachievable. The commenters expressed doubt that the proposed process could be realistically or uniformly accomplished because different operators will be involved in extending the LOV for the same airplane model. Furthermore, said the commenters, it is unlikely that any single operator has the information necessary to obtain an extended LOV. The cost, and uncertainty about the outcome of the evaluation, would make this process nearly impossible for an operator to attempt.

The commenters added that extending an LOV would need to be done by addressing each individual airplane, identified by tail number, whereas the maintenance actions which support the initial LOV are based on statistics pertaining to behavior of the entire fleet of a particular model. Thus, the method of determining maintenance actions to preclude WFD out to the LOV is not valid for a single airplane. The AAWG industry representatives recommended that establishing an extended LOV and evaluating repairs, alterations, and modifications be a sequential process. The first step would be to establish the extended LOV. The second step would be for each design approval holder for a modification to evaluate its own design relative to the extended LOV and obtain a separate, independent approval for its design. The operator would continue to be responsible for assembling all maintenance requirements, depending on actual airplane configuration, and for obtaining approval of the maintenance program from the principal maintenance inspector. Such a process is similar to industry proposals for compliance with the Aging Airplane Safety Final Rule.

Several commenters also remarked that the administrative process for obtaining an amended type certificate or supplemental type certificate will be extraordinarily difficult to manage because manufacturers, operators, and holders of supplemental type certificates do not necessarily have access to each other's proprietary information. The existing business and legal agreements in place did not contemplate the high degree of data disclosure that will be required to develop WFD guidance material and

data needed for an amended type certificate or supplemental type certificate. Furthermore, many transport airplanes are converted to operate in different roles than those for which they were originally designed. Often operators cannot obtain support or design data from design approval holders because the latter have concerns about liability, are no longer in business, or are more motivated to sell new airplanes than to support old ones.

Several commenters recommended that the FAA delete proposed § 25.1811 and revise proposed § 25.1807 to allow extension of an LOV by a process approved by the Administrator. They base their recommendation on the fact that the technical requirements for establishing an LOV are no different from those for establishing an extended LOV.

The FAA agrees that, given the extensive information required to develop guidelines for including a WFD evaluation of repairs, alterations, and modifications, the proposed requirements for extending the LOV needed to be changed. As discussed earlier, the FAA has removed those requirements. As a result, this final rule includes requirements for extending an LOV based on the original LOV airplane configuration plus all new structural modifications or replacements mandated by airworthiness directives. The FAA has revised requirements of § 26.23(b) to be consistent with § 26.21(b). As previously stated, if our research demonstrates that additional actions are needed to address risks for repairs, alterations, and modifications, the FAA will consider further rulemaking.

The FAA does not agree with the suggestions to allow extension of an LOV using a process approved by the Administrator. In this final rule, requirements for extending an LOV are similar to those for establishing the first LOV. However, the design approval holder is not required to develop the data to support an extended LOV because such extensions are optional. The extended LOV and associated maintenance actions (inspections, modifications, or replacements) must be defined within the Airworthiness Limitations section for the airplane. This requirement is unchanged from the proposed requirements of § 25.1811(b) of the NPRM. As stated in the NPRM, the FAA intends to use airworthiness directives to mandate any maintenance actions necessary to reach the LOV established under § 26.21, so that operators will have an opportunity to comment on the proposed maintenance actions. It is not necessary to use this process for extensions of the LOV, however, because the extended LOV would include all maintenance actions at the time of approval. For these reasons, the FAA has kept requirements for extending an LOV separate from § 26.21. The FAA has revised AC 120–YY to provide guidance on establishing an extended LOV.

2. Evaluation of Repairs, Alterations, and Modifications for an LOV Extension

EASA stated that certain existing repairs, alterations, and modifications should be evaluated for WFD when the LOV is being extended. EASA states that the risk of WFD increases for repairs, alterations, and modifications as airplanes age.

As discussed elsewhere in this document, an extension should be based on the airplane's structural configuration, just as the initial LOV is. Persons establishing extensions to LOVs may identify conditions or limitations in the Airworthiness Limitations section of the Instructions for Continued Airworthiness that apply to the extensions. For example, the LOV extension may only be valid for airplanes that operate at a certain cabin differential pressure or maximum takeoff gross weight. Operators may have to evaluate their airplanes and take certain actions prior to incorporating any extensions. AC 120–YY provides additional guidance on this.

3. Alternate Means of Compliance (AMOCs)

APA commented that operators should not be allowed alternate means of compliance (AMOCs) for the WFD rule because, it says, if the FAA allows AMOCs as it does with airworthiness directives, the ability to collect data and track compliance will be greatly complicated. Each operator, said the commenter, will comply in a manner with the least financial impact to its company. This may or may not be supported by the ongoing efforts of the original equipment manufacturers to develop analysis techniques and procedures. It will also add significant financial costs to the original equipment manufacturers and the FAA to support, track, and verify each AMOC.

The initial LOV is established and approved under § 26.21 or § 25.571. Any extension to the initial LOV or any subsequent LOV is established and approved under § 26.23. The FAA does not issue AMOCs for these regulations. Any deviation from a rule is handled via the procedures contained in 14 CFR part 11.

Under § 26.21, any maintenance actions needed to support the initial LOV will be mandated by airworthiness directives, and compliance with those airworthiness directives and the ability to apply for an AMOC for those maintenance actions will not involve procedures that are any different from those used for airworthiness directives today. An AMOC for the maintenance actions for an initial LOV will not affect the LOV itself.

Under § 26.23, however, any maintenance actions developed to support the extended LOV will be incorporated into the Airworthiness Limitations section of the Instructions for Continued Airworthiness. The maintenance actions for extended LOVs will not be published in airworthiness directives.

4. Extension Procedure Doesn't Allow Public Comment

ATA and Northwest Airlines stated that the proposed rule does not permit the public to comment on extensions to LOVs and the maintenance actions that support them. Extensions to LOVs mandated by airworthiness directive would allow the opportunity for public comments on extended LOVs.

Although mandating LOV extensions by airworthiness directive would allow the public the opportunity to comment, the FAA does not agree with the suggestions to use airworthiness directives to allow extension of an LOV. This is for two reasons:

- Approving an extended LOV isn't rulemaking; it's a finding of compliance with the applicable regulatory standard (*i.e.,* freedom from WFD).
- If the FAA doesn't extend the LOV, or subsequent extensions of that LOV, there's no unsafe condition justifying an airworthiness directive, because affected airplanes are grounded when they reach the LOV.

The FAA has revised AC 120–YY to provide guidance on establishing an extended LOV.

The AAWG recommended in its Task 3 Report that design approval holders and operators work together in establishing LOVs and LOV extensions. Under today's rule, the FAA expects that design approval holders and operators will work together when persons are seeking approval for extended LOVs.

J. Applicability for Existing Airplanes

The rule proposed in the NPRM would apply to existing transport category airplanes with a maximum takeoff gross weight greater than 75,000 pounds, by virtue of either the original type certification of the airplane or a later increase, that are operated under part 121 or 129.

This final rule applies to certain existing transport category, turbine-powered airplanes with a maximum takeoff gross weight greater than 75,000 pounds and a type certificate issued after January 1, 1958, regardless of whether the maximum takeoff gross weight is a result of an original type certificate or a later design change. In addition, it applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, if a design change approval for which application is made after the effective date of the rule has the effect of reducing the maximum takeoff gross weight from greater than 75,000 pounds to 75,000 pounds or less. It also applies to operators of those airplanes being operated under part 121 or 129.

1. Type Certificates Issued After January 1, 1958

As proposed, applicability of the rule was not limited to turbine-powered airplanes with type certificates issued after January 1, 1958. Everts Air Cargo requested that McDonnell Douglas Model DC–6 airplanes be excluded from applicability, and Boeing requested that both the DC–6 and DC–7 be excluded. Everts Air Cargo stated that its airplanes are non-pressurized, which should reduce the risk that they would develop WFD. Both Boeing and Everts pointed out that §§ 121.370a and 129.16 of the Aging Airplane Safety Final Rule apply only to certain transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958. The commenters recommended that the rule pertaining to WFD apply only to those same airplanes.

The FAA agrees that certain parts of the applicability of this final rule should align with the Damage Tolerance Data Rule and the Aging Airplane Safety Final Rule and other aging airplane rules, such as EAPAS/FTS. The McDonnell Douglas DC–6 and DC–7 airplanes have not had a damage tolerance assessment and have not been included in the Damage Tolerance Data Rule. In addition, the risk from excluding these airplanes is small because there are so few of them.

Therefore, in this final rule the FAA has added the phrase "transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958" to the applicability provisions of § 26.21 and to the operating rules. The change means that the following airplanes, which would have been affected by the proposal, are not subject to this final rule:

- McDonnell Douglas Models DC–6 and DC–7.
- Lockheed Model 1649A–98.
- Lockheed Model 1049 Series.
- Lockheed Models 49–46, 149–46, 649–79, 649A–79, 749–79, and 749A–79.

2. Original Type Certification

The applicability provision in proposed § 25.1807 included airplanes with maximum takeoff gross weights exceeding 75,000 pounds, as approved during original type certification, as well as airplanes with lower weights that had been increased to greater than 75,000 pounds through later design changes. This applicability provision was intended to address two situations. In the past, some designers and operators avoided applying requirements mandated only for airplanes over a specific capacity by receiving a design change approval for a slightly lower capacity. By referencing the capacity resulting from original type certification, the NPRM removed this means of avoiding compliance.

Similarly, an airplane design could be originally certified with a capacity lower than the minimum specified in the rule, but through later design changes, the capacity has been increased above this minimum. The reference in the NPRM to a later increase in capacity was intended to ensure that, if this occurs, the design would have to meet the requirements of the rule.

The applicability proposed in the NPRM did not distinguish among design changes based on whether their date of application for design approval occurred before or after the rule's effective date. That provision in proposed § 25.1807 is similar to that for the EAPAS/FTS, Fuel Tank Flammability, and Damage Tolerance Data Rules. In addition, the reference to capacity resulting from original type certification is common to proposed § 25.1807 and the other rules. The agency has determined that the approach to applicability under today's rule should be slightly different from that used in previous rules. This is to avoid requiring design approval holders to establish LOVs for models that have maximum takeoff gross weights that were decreased to 75,000 pounds or less by an amended type certificate or supplemental type certificate before the effective date of today's rule. Applicants for such design changes in the past could not have designed the airplanes' capacities to avoid complying with today's requirements, and it is not our intent to include them in the applicability of this final rule.

The FAA has revised this section (now § 26.21) to apply to transport category, turbine-powered airplanes with a maximum takeoff gross weight greater than 75,000 pounds and a type certificate issued after January 1, 1958, regardless of whether the maximum takeoff gross weight is a result of an original type certificate or a later design change. This section also applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, if a design change approval, for which application is made after the effective date of the rule, has the effect of reducing the maximum takeoff gross weight from greater than 75,000 pounds to 75,000 pounds or less.

The FAA has also revised the applicability of §§ 121.1115 and 129.115 to be consistent with the applicability of § 26.21 for existing airplanes. For future airplanes for which an LOV is approved in accordance with § 25.571 of today's rule, we have retained the requirement that §§ 121.1115 and 129.115 apply to operators of U.S.-registered transport category, turbine-powered airplanes, regardless of the maximum takeoff gross weight. For future design changes reducing the maximum takeoff gross weight from greater than 75,000 pounds to 75,000 pounds or less, the compliance date for operators is 30 months after the effective date of the rule, or the date of design change approval, or the date specified in the plan approved under § 25.571(b), whichever occurs latest. For these design changes, unless or until the design approval holder complies with § 26.21 by establishing a new LOV, the LOV applying to the airplane in the absence of the design change would still apply.

3. Airplane Configuration

This final rule requires that holders of type certificates for existing airplanes evaluate certain configurations of those airplanes for susceptibility to WFD and use the results of the evaluation to set LOVs for those airplanes. The configurations to be evaluated are:

- All model variations and derivatives approved under the type certificate, and
- All structural modifications and replacements to those airplanes which were mandated by airworthiness directives issued to address any configuration developed by the design approval holder.

In the NPRM, the FAA proposed evaluation of the same airplane configurations.

In their comments, the industry representatives on the AAWG, Boeing, and Airbus expressed concern about the proposed requirement to evaluate all structural modifications and

replacements mandated by airworthiness directives. Airbus stated that this approach deviates from all previous industry recommendations and will lead to a significant increase in configurations to be assessed. The industry representatives on the AAWG, Boeing, and Airbus requested that the FAA reconsider this requirement and focus only on airworthiness directives which have been issued specifically to address WFD.

The FAA issues many airworthiness directives which require structural modifications or replacements not intended to address WFD. These required modifications or replacements, however, may affect susceptibility of a structure to WFD. A modification might introduce new details that cause a structure which was previously not susceptible to WFD to become susceptible, or make a change that increases susceptibility so that previously established maintenance actions need to be modified. Because today's rule is intended to address the potential for WFD in airplanes as they are actually configured, we must address these required modifications. It would serve no useful purpose to evaluate structural configurations which no longer exist in service because airworthiness directives have required modifications to those configurations.

Modifications mandated by airworthiness directives are much fewer in number than other modifications, and they generally affect airplanes of the same model in the same way. Many modifications mandated by airworthiness directives would not affect the potential for WFD; others could.[30] Therefore, the FAA is today issuing this requirement as proposed.

4. Weight Cutoff

In the preamble to the proposed rule, the FAA stated that the agency had considered applying the rule to all existing transport category airplanes, regardless of the maximum takeoff gross weight. The FAA acknowledged that using a weight cutoff of greater than 75,000 pounds excludes approximately 1,600 regional jets operating under parts 121 or 129, giving the impression that this rule might not align with our "One Level of Safety" initiative. However, the FAA justifies the proposed weight cutoff on the basis of the relatively young age of the regional jet fleet. Because those airplanes are younger, they have a low present risk for WFD.

Embraer agreed that existing regional jet airplanes should not be subject to the rule at this time, stating that the airplanes have typically been certificated to damage tolerance requirements. Other commenters—such as the National Transportation Safety Board, Transport Canada, the Air Line Pilots Association (ALPA), EASA, and an individual commenter—did not agree, because the regional jets are at risk of developing WFD as they accumulate flight cycles just as larger airplanes are. The ALPA recommended that the FAA form a study group to assess WFD in lighter airplanes. Pending a detailed risk analysis, the association suggested a weight cutoff of 12,000 pounds.

The 75,000 pound weight cutoff was based on recommendations from the AAWG for WFD rulemaking. The overwhelming majority of passengers and cargo are carried by airplanes with a maximum gross takeoff weight of greater than 75,000 pounds. Inclusion of airplanes below that limit and above 12,500 pounds is under study by the FAA and if service experience shows a need to include those airplanes, rulemaking will be considered to include them.

The FAA's highest priority is to address the oldest airplanes at highest risk of WFD—namely, airplanes with a maximum takeoff gross weight greater than 75,000 pounds. However, the FAA recognizes that the lighter and relatively younger regional jets will also be at risk of developing WFD as they accumulate flight cycles. We will reassess the fleet, including those airplanes below 75,000 pounds, after this rule has been implemented, to determine whether further rulemaking is necessary.

5. Default LOVs and Excluded Airplanes

a. Table 1—Default LOVs

In the proposed operational requirements in the NPRM, the FAA inadvertently created an ambiguity regarding the obligations of operators of airplanes for which the design approval holder might fail to establish an LOV as required. While the FAA fully anticipates that affected design approval holders will comply with the requirements of this final rule, there is a need to clearly provide for what happens if one or more does not. As proposed, paragraph (a) of §§ 121.1115 and 129.115 would apply to operators of airplanes for which an LOV "has been established." Paragraph (b) of these sections requires that operators incorporate approved LOVs.

Our expectation was that, if a design approval holder failed to comply with the requirement to obtain approval for an LOV, the operator or operators, in order to continue to operate the affected airplanes, would themselves obtain the necessary approval. Because they would not have access to the design approval holder's data necessary to perform a WFD evaluation, they would likely have to rely on the design service goals and extended service goals set forth in Table 3 of the NPRM (*see* below). As stated in the NPRM, "After June 18, 2008, an affected operator could not operate an airplane unless the operator has incorporated an Airworthiness Limitations section approved under Appendix H to part 25 or § 25.1807 into its maintenance program."

The FAA now recognizes that the final rule should explicitly define operators' obligations if the design approval holder fails to comply. Therefore, the FAA has revised the operational rules to state that, in the absence of an approved LOV, the operator must incorporate the applicable LOV specified in Table 1 [31] of either § 121.1115 or § 129.115. The table also adds flight hour numbers for design service goals for airplanes for which that information was available.

The inclusion of default LOVs in Table 1 does not prevent an operator from developing its own LOV under § 26.23 of this final rule. The rule specifies that—

- The design approval holder must establish an LOV, and
- If an LOV is not approved, an operator must use the default LOV in Table 1. If an operator later chooses to establish an LOV under § 26.23, that LOV will be considered an extended LOV.

This provision eliminates any need for operators to obtain a separate approval for these "default" LOVs. It also eliminates the risk that a relatively young airplane would be grounded as of an operator's compliance date simply because the FAA had not approved an LOV for that airplane.

Boeing stated that the default LOVs published in the Technical Document are without context and could be misused. Boeing said that it could provide more appropriate numbers to

[30] Advisory Circular 120–YY provides guidance on which modifications mandated by airworthiness directives should be assessed by the design approval holder.

[31] To develop Table 1, the FAA added airplanes to Table 3, deleted airplanes from Table 3, and split Boeing Models 737, 747, and 777 airplanes into two groups. These airplanes were added: Airbus A318 and A380; Bombardier CL–600 (2D15 and 2D24); and Embraer ERJ–170 and ERJ–190. The following airplane models were deleted: Boeing 707 and 720; Bombardier CL–44 and BD–700; British Aerospace Airbus, Ltd. BAC 1–11; British Aerospace (Commercial Aircraft) Ltd. Armstrong Whitworth Argosy A.W. 650 Series 101; BAE Systems (Operations) Ltd BAe 146A (all models), Avro 146 RJ70A, Avro RJ85A, and Avro RJ100A.

use, but that these numbers should be removed from the rule because Boeing intends to comply with the rule.

The default LOVs in Table 2 of § 121.1115 and § 129.115 are intended to be used by persons who may choose to operate one of the excluded airplanes. They may also be used by other operators if a design approval holder is late in establishing an LOV, in order to prevent airplanes with fewer accumulated flight cycles and flight hours than the default LOV from being grounded. A few airplanes, such as the Airbus A380, already have an operational limitation included in their Airworthiness Limitations section. These are referenced in the table by a NOTE, and may be used as a default LOV.

FIGURE 3—COMPARISON OF NPRM DESIGN AND EXTENDED SERVICE GOALS AND FINAL RULE DEFAULT LOVS

Airplane model	NPRM table 3	Final rule §§ 121.1115 and 129.115 table 1
	Design and Extended Service Goals (flight cycles)	Default LOVs [flight cycles (FC) or flight hours (FH)]
Airbus:		
A300 B2 Series [32]	48,000	48,000 FC
A300 B4–100 Series [33]	40,000	40,000 FC
A300 B4–203	34,000	34,000 FC
A300–600 Series [34]	30,000	30,000 FC/67,500 FH
A310–200 Series (all models)	40,000	40,000 FC/60,000 FH
A310–300 Series (all models)	35,000	35,000 FC/60,000 FH
A318 Series (all models)	None provided	48,000 FC/60,000 FH
A319 Series (all models)	48,000	48,000 FC/60,000 FH
A320–100 Series (all models) [35]	48,000	48,000 FC/48,000 FH
A320–200 Series (all models) [35]	48,000	48,000 FC/60,000 FH
A321 Series (all models)	48,000	48,000 FC/60,000 FH
A330–200, –300 Series (except WV050 family) (non enhanced) [36].	40,000	40,000 FC/60,000 FH
A330–200, –300 Series WV050 family (enhanced) [36]	40,000	33,000 FC/100,000 FH
A330–200 Freighter Series	None provided	NOTE [38]
A340–200, 300 Series(except WV 027 and WV050 family) (non enhanced) [37].	20,000	20,000 FC/80,000 FH
A340–200, 300 Series WV 027 (non enhanced) [37]	20,000	30,000 FC/60,000 FH
A340–300 SeriesWV050 family (enhanced) [37]	20,000	20,000 FC/100,000 FH
A340–500, 600 Series (all models) [37]	20,000	16,600 FC/100,000 FH
A380–800 Series (all models)	None provided	NOTE [39]
Boeing:		
Boeing 707 (–100 Series and –200 Series)	20,000	Excluded per § 26.21(g)
Boeing 707 (–300 Series and –400 Series)	20,000	Excluded per § 26.21(g)
717 (all models)	60,000	60,000 FC/60,000 FH
Boeing 720	30,000	Excluded per § 26.21(g)
727 (all models)	60,000	60,000 FC
737 (Classics): 737–100, –200, –200C, –300, –400, –500 [40]	75,000	75,000 FC
737 (NG): 737–600, –700, –700C, 800, 900 [40]	75,000	75,000 FC
737–900ER	None provided	75,000 FC
747 (Classics): 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –747SP, 747SR [41].	20,000	20,000 FC
747–400: 747–400, –400D, –400F [41]	20,000	20,000 FC
757 (all models)	50,000	50,000 FC
767 (all models)	50,000	50,000 FC
777–200, –300 [42]	44,000	40,000 FC
777–200LR, 777–300ER [42]	44,000	40,000 FC
777F	None provided	11,000 FC
Bombardier:		
CL–44D4 and CL–44J	20,000	Excluded per § 26.21(g)
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900).	None provided	60,000 FC
British Aerospace Airbus, Ltd.:		
BAC 1–11 (all models)	85,000	Excluded per § 26.21(g)
British Aerospace (Commercial Aircraft) Ltd.:		
Armstrong Whitworth Argosy A.W. 650 Series 101	20,000	Excluded per § 26.21(g)
BAE Systems (Operations) Ltd.:		
BAE 46 (all models) and Avro 146 RJ70A, RJ85A and RJ100A (all models).	50,000	Excluded per § 26.21(g)
Embraer:		
ERJ 170 (all models)	None provided	NOTE [43]
ERJ 190 (all models)	None provided	NOTE [44]
Fokker:		
F.28 Mark 70, Mark 100 (all models)	90,000	90,000 FC
Lockheed:		
300–50A01 (USAF C 141A)	20,000	Excluded per § 26.21(g)
L–1011 (all models)	36,000	36,000 FC
188 (all models)	26,600	26,600 FC

FIGURE 3—COMPARISON OF NPRM DESIGN AND EXTENDED SERVICE GOALS AND FINAL RULE DEFAULT LOVS—Continued

Airplane model	NPRM table 3	Final rule §§ 121.1115 and 129.115 table 1
	Design and Extended Service Goals (flight cycles)	Default LOVs [flight cycles (FC) or flight hours (FH)]
382 (all models)	20,000	20,000 FC/50,000 FH
1649A–98	20,000	Excluded per § 26.21(a)
1049–54, 1049B–55, 1049C–55, 1049D–55, 1049E–55, 1049F–55, 1049G–8249–46, 149–46, 649–79, 649A–79.	20,000	Excluded per § 26.21(a)
749–79, 749A–79	20,000	Excluded per § 26.21(a)
McDonnell Douglas:		
DC–6 [45]	20,000	Excluded per § 26.21(a)
DC–6A (all models) [45]	20,000	Excluded per § 26.21(a)
DC–6B (all models) [45]	20,000	Excluded per § 26.21(a)
DC–7 (all models) [45]	20,000	Excluded per § 26.21(a)
DC–8, –8F (all models)	50,000	50,000 FC/50,000 FH
DC–9 (all models)	100,000	100,000 FC/100,000 FH
MD–80 (all models)	50,000	50,000 FC/50,000 FH
MD–90 (all models) [46]	60,000	60,000 FC/90,000 FH
DC–10–10, –15 (all models)	42,000	42,000 FC/60,000 FH
DC–10–30, –40, –10F, –30F, –40F (all models)	30,000	30,000 FC/60,000 FH
MD–10–10F (all models)	42,000	42,000 FC/60,000FH
MD–10–30F (all models)	30,000	30,000 FC/60,000 FH
MD–11, –11F (all models)	20,000	20,000 FC/60,000 FH
Airplanes with Maximum Takeoff Gross Weight Changes:		
All airplanes whose maximum takeoff gross weight has been decreased to 75,000 pounds or below after January 14, 2011 or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate.	Design service goals and extended service goals for airplanes whose weight has been changed are unknown.	There are no default LOVs for airplanes whose weight has been changed.

[32] Listed as A300 B2–1A, B2–1C and B2K–3C in the NPRM.
[33] Listed as A300 B4–2C and B4–103 in the NPRM.
[34] Listed as A300 B4–600 Series, B4–600R Series, and F4–600R Series in the NPRM.
[35] Listed as A320 (all models) in the NPRM.
[36] Listed as A330 (all models) in the NPRM.
[37] Listed as A340 (all models) in the NPRM.
[38] Airplane operation limitation is stated in the Airworthiness Limitation section.
[39] Airplane operation limitation is stated in the Airworthiness Limitation section.
[40] Listed as Boeing 737 in the NPRM.
[41] Listed as Boeing 747 in the NPRM.
[42] Listed as Boeing 777 in the NPRM.
[43] Airplane operation limitation is stated in the Airworthiness Limitation section.
[44] Airplane operation limitation is stated in the Airworthiness Limitation section.
[45] Airplane certificated before 1958.
[46] Listed as MD–90–30 in the NPRM.

b. Table 2—Airplanes excluded from § 26.21

Section 26.21 specifically excludes models of airplanes from today's rule if no airplanes of that model are operating under part 121 or 129. Today's revisions to parts 121 and 129 requiring that operators incorporate LOVs into their structural maintenance programs include applicability to operators of airplanes that have been excluded under § 26.21 should the operator later decide to operate one of them.

In the NPRM, the FAA proposed excluding airplanes not operated under part 121 or 129. The agency proposed exclusion from the rule for:

- Bombardier BD–700.
- Gulfstream GV.
- Gulfstream GV–SP.
- British Aerospace, Aircraft Group, and Societe Nationale Industrielle Aerospatiale Concorde Type 1.

The FAA requested comments on the feasibility and benefits of including or excluding these airplanes. The agency also requested comments on the feasibility of including or excluding any other transport category airplanes with a maximum takeoff gross weight greater than 75,000 pounds from the requirements of this provision, whether or not they are operated under part 121 or 129.

Several commenters disagreed with the applicability of the rule, as proposed. The National Transportation Safety Board recommended that the final rule also apply to airplanes operated under part 135 because they may be at equal or greater risk of developing WFD compared to those operated under parts 121 or 129.

An individual commenter suggested that the FAA delete the list of airplanes proposed for exclusion because it gives preferential treatment to certain airplanes. This commenter added that an operator had planned to use Gulfstream GV airplanes for part 121 operations but chose not to do so only for financial reasons. If an operator did decide to operate an excluded airplane under part 121 or 129, said the commenter, there would be no operational limit and no associated maintenance actions to preclude WFD in that airplane. Although this commenter did not support having a list of excluded airplanes in the rule, he suggested—based on the agency's stated rationale in the NPRM—that we add the following airplanes to the list:

- The Douglas DC–6, DC–6A, and DC–7.
- The Lockheed 049, 149, 649, 749, 1049, 1649, 188, 300, and 382.
- The Boeing 707 and 720.

We have reconsidered our rationale for the list of excluded airplanes proposed in the NPRM. Those airplanes have a maximum takeoff gross weight greater than 75,000 pounds but are not currently operating under part 121 or 129. Therefore, there is no reason to require the design approval holders to establish LOVs for them. We have decided to retain on the list the models originally proposed for exclusion from the rule and, in response to comments, and to be consistent with other aging airplane rules, have added other models which are not operated under part 121 or 129. The complete list is shown below.

(1) Bombardier BD–700.
(2) Bombardier CL–44.
(3) Gulfstream GV.
(4) Gulfstream GV–SP.
(5) British Aerospace, Aircraft Group, and Societe Nationale Industrielle Aerospatiale Concorde Type 1.
(6) British Aerospace (Commercial Aircraft) Ltd., Armstrong Whitworth Argosy A.W. 650 Series 101.
(7) British Aerospace Airbus, Ltd., BAC 1–11.
(8) BAE Systems (Operations) Ltd., BAe 146.
(9) BAE Systems (Operations) Ltd., Avro 146.
(10) Lockheed 300–50A01 (USAF C141A).
(11) Boeing 707.
(12) Boeing 720.
(13) deHavilland D.H. 106 Comet 4C.
(14) Ilyushin Aviation IL–96T.
(15) Bristol Aircraft Britannia 305.
(16) Avions Marcel Dassault-Breguet Aviation Mercure 100C.
(17) Airbus Caravelle.
(18) D & R Nevada, LLC, Convair Model 22.
(19) D & R Nevada, LLC, Convair Model 23M.

The FAA recognizes that it is possible—as suggested by the individual commenter—that in the future an operator could decide to operate an "excluded" airplane under part 121 or 129. Therefore, in this final rule §§ 121.1115 and 129.115 are revised to provide that no airplane listed in § 26.21 can be operated under part 121 or 129 unless an LOV for the airplane has been incorporated into the operator's structural maintenance program. The operational rules state that, in the absence of an approved LOV, the operator must incorporate the applicable default LOV specified in Table 2 of either §§ 121.1115 or 129.115. Those default LOVs are based on Table 3 of the NPRM. As stated in the NPRM, Table 3 used design service goals and extended service goals that were based on information from design approval holders or on a conservative estimate by the FAA. It did not include the Comet 4C, IL–96T, Britannia 305, Mercure 100C, Caravelle, Convair Model 22, or Convair Model 23M. To develop those default LOVs, the FAA treated flight-cycle or flight-hour data that was available for those airplanes as fatigue test data and reduced it by a factor of two. This approach is based in part on AC 25.571–1X for new airplanes.

6. Bombardier Airplanes

Bombardier asked for clarification of the applicability of the proposed rule to several of its models and their derivatives. Specifically, the company asked about the following airplanes:

Models CL 600 Challenger 870 and 890: Bombardier asked whether they should be added to the list of excluded airplanes in proposed § 25.1807(i).

The CL 600 Challenger 870 and 890 do not currently have type certificates issued by the U.S. Therefore, there are no N-registered airplanes operating under either part 121 or 129. As a result, this final rule does not apply to them at this time. However, if Bombardier were to apply for a U.S. type certificate before the effective date of this final rule, the company would have to comply by the compliance date in § 26.21. Even if Bombardier were to apply after the effective date of the rule, the company would be subject to requirements of § 26.21 because the Bilateral Aviation Safety Agreements (BASA)[47] with Canada allow the U.S. to impose additional requirements in the interest of safety. Other airplanes in similar circumstances would be handled in the same way.

Model CL 600 derivatives—RJ 701 ER, RJ 701 LR, all RJ 705 airplanes, and all RJ 900 airplanes: Bombardier noted that Table 3 in the NPRM, titled Design and Extended Service Goals, does not list these models.

The CL 600 derivatives RJ 705 and RJ 900 were inadvertently left off Table 3 of the NPRM. This final rule applies to Bombardier models RJ 705 series and RJ 900 series because their maximum takeoff gross weight is greater than 75,000 pounds, and they are operated under part 121 or 129. They have been added to Table 1, which is the applicability table for this final rule. Today's rule does not apply to Bombardier RJ 701 series airplanes because their maximum takeoff gross weight is not greater than 75,000 pounds.

Model CL 44: These airplanes were previously exempted from the other aging airplane rules, both proposed and final, on the basis of their age and the very small number remaining in service.

Bombardier Model CL 44 is not operated under either part 121 or 129 and, therefore, the FAA has revised the list of excluded airplanes in § 26.21 of today's rule to include Bombardier Model CL 44.

7. Intrastate Operations in Alaska

Lynden Air Cargo requested that the NPRM pertaining to WFD be withdrawn in its entirety. Alternatively, the commenter requested that Lockheed Model 382 airplanes be excluded from the rule and that all air carriers engaged in intrastate operations in Alaska be excluded. In support of this request, the commenter gave the following reasons:

- There is no replacement airplane with the necessary lift and operational characteristics.
- The L–382 airplanes are not used to carry passengers.
- It is in the public interest to maintain the unique capabilities of the L–382 in Alaska where it supports remote communities and projects with no roads or waterways and supports the U.S. military during critical campaigns and the ongoing war on terrorism.

Lynden Air Cargo also asked that it be excluded from § 121.909.

Senator Murkowski of Alaska and the late Senator Stevens stated that the rule, as proposed, would have severe consequences to residents and cargo carriers operating in that State. Senator Stevens referred to Section 1205 of the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 40113(f)), which requires that—when modifying regulations affecting intrastate aviation in Alaska—the FAA consider the extent to which Alaska is not served by transportation modes other than aviation. Accordingly, Senator Stevens requested that the FAA exempt all intrastate operations in Alaska and the interstate operations of the six Lockheed L–382G airplanes operated by Lynden Air Cargo. The senator pointed out that the L–382G is out of production and there is no suitable replacement available.

Several other commenters addressed operational limits for Lockheed Models L–382E and G, although they did not discuss operation of these airplanes in Alaska. Specifically, Transafrik International asked that Lockheed Models L–382E and G be removed from Table 3 or that their operational limit be increased to at least 60,000 cycles. The commenter added that the airplanes are no longer in production and there is no

[47] Agreement between the Government of the United States of America and the Government of Canada for Promotion of Aviation Safety, June 12, 2000.

replacement airplane able to take off and land on short, unimproved runways with the payloads required. A comment from Lockheed Martin estimated—based on certain inspections and modifications which it had performed on the outer and center wing structure—that the LOV for the Lockheed Model L–382 is 50,000 flight hours but would no doubt be changed to at least 75,000 flight hours, to accommodate usage in the fleet. Lockheed Martin also identified maintenance actions that should be performed on the wing structure to operate to that limit. The commenter stated that, regardless of any FAA decision on implementation of the rule, the company will continue to ensure that operators of Lockheed Model L–382 model aircraft are provided with inspection procedures and replacement actions that effectively mitigate the risk of failure due to WFD.

Consistent with 49 U.S.C. 40113(f), the FAA has carefully considered the potential impact of this rulemaking on Alaska intrastate operators to determine whether intrastate service in Alaska would be adversely affected. Airplanes to which this final rule is applicable are not operated solely in intrastate commerce in Alaska. Therefore, contrary to the commenters' assertions, the FAA has determined that there would not be an adverse effect on intrastate air transportation in Alaska and that regulatory distinctions are not appropriate.

The Lockheed L–382G operated by Lynden Air Cargo is operated under 14 CFR part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations and operates interstate as well as to foreign destinations. The FAA has decided against excluding the L–382G from requirements of §§ 121.1115 and 129.115 for those airplanes in interstate operation. The safety rationale for these rules applies equally to that airplane. In accordance with 14 CFR part 11, Lynden Air Cargo may submit a petition for exemption from those rules. Such a petition must state (1) why granting such an exemption would be in the public interest and (2) why a grant of exemption would not adversely affect safety or how it would provide a level of safety equivalent to the regulation.

Regarding Lynden Air Cargo's request for exclusion from § 121.909, that requirement, which was formerly designated as § 121.370(a), has been in effect since November 1, 2002.[48] The FAA has not made any changes to that rule other than changing its section number.

[48] 67 FR 72726, December 6, 2002.

The FAA encourages Transafrik and Lynden Air Cargo as well as other operators of Model L–382G to work with Lockheed Martin regarding the establishment of the LOV for the model.

8. Composite Structures

The Modification and Replacement Parts Association (MARPA) and Airbus asked that the FAA clarify applicability of the rule to structure made of composite materials, and MARPA recommended that composite structure should be treated the same as metallic structure.

There is an increasing trend for manufacturers to use composite materials to build airplanes. This structure wears differently than metallic structure. For example with metallic structure, repeated loads or environmental exposure cause fatigue cracking or corrosion. With composite structure, repeated loads or environmental exposure cause general degradation (such as cracking, delamination, and oxidative breakdown of the resin) and accumulation of local damage (such as wearing out of fastener holes and handling damage, or water ingression between composite layers, followed by freeze-thaw cracking of the core).

The FAA issued AC 20–107B to provide guidance for certifying composite structures, including guidance for evaluating composite structure relative to the damage tolerance requirements of § 25.571.

The objective of this final rule is to address the normal fatigue wear out of metallic structure. Although the trend in industry is to use composite structure as much as possible, a significant percentage of a new airplane may still be built of metal. Full-scale fatigue test evidence would be necessary to demonstrate that WFD will not occur in metallic structure of the airplane. It would also be necessary for the design approval holder for the airplane to develop an LOV to limit the operation to the point in time up to which it has been demonstrated that WFD will not occur in the airplane's metallic structure.

The FAA will continue to evaluate whether rulemaking is necessary to address the normal wear of composite structures.

K. Harmonization

A number of commenters, including industry representatives on the AAWG, FedEx, Boeing, Embraer, the National Air Cargo Association (NACA), AWAS, and Airbus noted that the WFD NPRM has not been harmonized with the European Aviation Safety Agency (EASA), which has issued Notice of Proposed Amendment (NPA) 05–2006 on this subject, and other national aviation authorities. The commenters pointed out that the Initial Regulatory Evaluation did not consider the cost of failing to harmonize the rule with other airworthiness authorities. Airbus also questioned whether the evaluation addressed costs associated with importing into the United States airplanes that have not complied with the rule, especially if the rule is not harmonized with other airworthiness authorities.

They recommended that the FAA harmonize the rule with those authorities before issuing it. According to the commenters, lack of harmonization could cause the following problems:

1. It could create a significant challenge to future certification projects, encouraging unilateral and possibly arbitrary certification activities.

2. There could be a substantial negative economic impact with respect to the transfer, lease, or sale of aircraft between the U.S. and other countries. Commenters suggested that bilateral agreements be amended to support the transfer of used aircraft subject to the final rule.

3. The FAA and EASA could have different approaches to WFD.

4. Type certificate holders from other countries may not be given the same priority and allocation of FAA resources as are type certificate holders from this country, resulting in delayed approval for applications from other countries.

Boeing, EASA, and Airbus requested that the FAA include the requirement to evaluate certain repairs, alterations, and modifications to align its requirements with those being proposed by EASA.

The FAA is working closely with EASA and other national airworthiness authorities to harmonize this final rule as much as possible. On April 25, 2006, EASA published NPA 05–2006, entitled Ageing Aeroplane Structures. That notice proposed technical guidance to be used for developing programs for continuing structural integrity, to ensure that the structure of aging airplanes is adequately maintained throughout their operational lives. Among other things, the notice proposed guidance for addressing WFD in existing airplane models. The FAA has provided comments on that proposed rulemaking. EASA is considering our comments and has discussed them with us.

Many of the changes made to our proposed rule will facilitate harmonization with national airworthiness authorities. Some of these changes are the following:

1. The design approval holder requirements proposed in the NPRM as part 25, subpart I, are now contained in a new part 26 to harmonize more easily with the regulatory structure of other national airworthiness authorities.

2. This final rule uses the term "limit of validity" rather than "initial operational limit" to align more closely with other national airworthiness authorities.

3. This final rule uses compliance dates that specify a phased approach for establishing the LOV for existing airplane models. NPA 05–2006 links compliance dates to design service goals. As discussed above, the FAA has concluded that the latter approach creates unnecessary complexity and uncertainty. We have submitted comments about this matter to EASA and are in discussions about it. In terms of establishing an LOV, the technical guidance in AC 120–YY is consistent with EASA's technical guidance in NPA 05–2006.

4. With respect to removal of requirements pertaining to repairs, alterations, and modifications, the FAA is working closely to harmonize this final rule with the rule EASA is developing but has not yet published for public comment.

5. Finally, the changes to § 25.571 are based on a recommendation of the General Structures Harmonization Working Group of ARAC. Development of the October 2003 recommendation pertaining to WFD involved harmonization between U.S. and European requirements.

L. The Regulatory Evaluation for the NPRM

The estimated present value cost of this final rule is about $3.6 million, while the estimated present value cost of the NPRM was estimated to be about $360 million. The estimated benefits of this final rule are worth $4.8 million in present value and are based on managing WFD with maintenance actions developed under this final rule versus the current practice of issuing airworthiness directives as WFD is found. The estimated present value benefits of the NPRM consisted of $726 million of accident prevention benefits and $83 million of detection benefits for total benefits of $809 million.

We received many comments regarding the validity of the regulatory evaluation of the proposed rule on WFD. In general, commenters stated that the potential benefits of the rule seemed to be overstated, and the potential costs seemed to be understated. Therefore, commenters challenged the conclusion that the benefits of the rule justify the costs. The commenters included Lockheed Martin, Boeing, Airbus, Bombardier, NACA, the CAA, ATA, FedEx, United Parcel Service, AWAS, American Airlines, Lynden Air Cargo, industry representatives on the AAWG, and an individual commenter.

1. Benefits of Proposed Rule

Some commenters questioned how a benefit of $726 million could be attributable to accident prevention when there have been no accidents related to WFD since the Aloha Airlines accident in 1988. The NACA and other commenters also argued that the regulatory evaluation makes a false assumption when it defines the cost benefit number for avoiding fleet grounding. Finally, the ATA and several other commenters suggested that projected benefits would decrease if the regulatory evaluation were updated to include data from the years 1974 through 1983 and 2000 through 2005.

Today's rule establishes a consistent approach to management of aging airplanes so that they are not operated to the point where WFD occurs. Thus the potential benefit of the rule is preventing catastrophic structural failure in flight that could result in loss of lives and loss of the airplane. Other benefits of the rule are costs avoided under the current system. Relying on the issuance of airworthiness directives to address WFD—whenever it happens to be discovered—causes unscheduled down time. The issuance of emergency airworthiness directives and immediately adopted rules may result in the unscheduled removal from service of a fleet of airplanes.

This final rule requires a design approval holder to establish an LOV for an airplane that reflects the fatigue characteristics of the airplane structure. If the WFD evaluation determines that maintenance actions are necessary to reach this LOV, the FAA would adopt them through the normal airworthiness directive process, allowing opportunity for notice and comment and accomplishment of required actions during scheduled maintenance. As such, the costs of these maintenance actions would be lower than if the FAA adopted emergency airworthiness directives or immediately adopted rules mandating the same actions as a result of in-service occurrences of WFD. As discussed below, the FAA expects very few airplanes to be retired solely because they reach their LOV. We have also taken this into account.

Our revised regulatory evaluation lists three benefits of the rule, namely

(1) Prevention of accidents;

(2) Extension of the economic life of the airplane with corresponding revenues from that additional economic life; and

(3) Near elimination of emergency airworthiness directives pertaining to WFD, which significantly reduces downtime associated with urgent unscheduled maintenance. The quantified benefit of the final rule is based solely on this third benefit, which is valued at $9.8 million or, evenly distributed over 20 years, a present value of approximately $4.8 million.

2. Costs of Proposed Rule

a. Need To Know LOVs To Determine Cost

Some commenters stated that, if the operational limit for each airplane model were not known, then the cost of the rule could not be determined.

In our Initial Regulatory Evaluation, the agency estimated the costs of initial operational limits to operators by using the design service goal for each airplane model as the initial operational limit. Those cost estimates would be expected to be higher than estimates based on LOVs that design approval holders anticipate establishing because in most cases, these LOVs are expected to exceed the design service goals. During the comment period, manufacturers provided the LOVs that they anticipate they will be establishing under today's rule. Those LOVs were 33% to 180% higher than the airplane's design service goal. Accordingly, our analysis in the Final Regulatory Evaluation uses these anticipated LOVs and indicates a lower cost to operators than was initially projected.

Airbus stated that not all of its models will have LOVs from 33% to 180% beyond the airplane's design service goal. Airbus will have LOVs for some models that will be equal to the airplane's design service goal. Although some of Airbus's LOVs are equal to the design service goal, which makes the LOVs span a shorter time, we still do not anticipate that any Airbus airplanes will need to be retired during the 20-year analysis period as a result of this final rule.

FedEx, Northwest Airlines, and ATA argued that operator cost estimates are not credible if they are based on anticipated LOVs instead of LOVs that have been accepted by the FAA and industry. It is for this reason that FedEx further argued that an operational rule must be proposed after the design approval holder's LOVs have been approved by the FAA. This would also, noted the commenter, provide the

public with the opportunity to comment on those LOVs.

The FAA measures the economic loss to operators of retiring an airplane at LOV instead of at a planned future retirement date. The FAA considers that this is a reasonable way to estimate compliance costs and that, ultimately, the LOVs that are accepted by the FAA and industry will be very close to those anticipated LOVs that the FAA has received from industry and used for these estimates of cost.

b. Need To Know Maintenance Actions To Determine Cost

Some commenters suggested that the costs associated with maintenance actions to preclude WFD prior to reaching the LOV either could not be determined or were substantially underestimated because the actions were not yet developed. Other commenters indicated that costs used in the regulatory evaluation do not accurately reflect operators' costs. They said, for example, that estimates of the number of hours needed to accomplish inspections, the number of inspections needed in a maintenance visit, and the number of days an airplane is out of service to accomplish maintenance did not reflect the actual experience of operators. Boeing added that the overall cost of the rule is difficult to determine because there will be costs related to maintenance actions required by airworthiness directives.

Although this final rule allows design approval holders to establish LOVs without relying on maintenance actions, the FAA expects most design approval holders will adopt LOVs that rely on such actions. As discussed in the NPRM, design approval holders are not required to identify and develop maintenance actions if they can show that such actions are not necessary to prevent WFD before the airplanes reach the LOV. As discussed in the Final Regulatory Evaluation, the FAA anticipates that at least Boeing will propose LOVs that will depend upon accomplishment of future maintenance actions. This is consistent with Boeing's current practice of developing service information that defines the maintenance actions to address WFD in its products. However, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions, so their costs are not attributable to this final rule. This is also consistent with the current practice of issuing airworthiness directives to address unsafe conditions associated with WFD. The FAA will provide cost estimates when issuing the airworthiness directives for any maintenance actions necessary to prevent WFD.

The FAA recognizes that this final rule is unusual in that it may depend upon future rulemaking to fully achieve its safety objectives. In the context of WFD, this approach is necessary to enable design approval holders to propose LOVs that allow operators the longest operational lives for their airplanes, while still ensuring freedom from WFD. This approach allows for an implementation strategy that provides flexibility to design approval holders in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes. The FAA has issued many airworthiness directives in the past to address WFD issues, and the agency anticipates that the approach adopted today will interface smoothly with existing practices for issuing airworthiness directives.

In this regard, this final rule is similar to SFAR 88, which also required design approval holders to perform technical evaluations (in that case, of fuel tank ignition sources) and to develop necessary maintenance actions that would be mandated by airworthiness directive. To date, the FAA has issued over 100 airworthiness directives to address unsafe conditions identified as a result of SFAR 88. These airworthiness directives were issued based on this proactive approach of requiring analyses to identify unsafe conditions, rather than relying on service experience to identify them, with potentially catastrophic results. In the context of SFAR 88, this approach has been generally recognized as being effective. The objective of this final rule is to establish a similar proactive approach that will enable us to issue any necessary airworthiness directives before WFD results in potentially catastrophic structural failure.

c. Costs to Manufacturers

Airbus indicated that, considering the significant number of hours necessary to train enough engineers and then to comply with the rule, the Initial Regulatory Evaluation substantially underestimated the costs of this rulemaking for manufacturers. Airbus said that the cost of future LOV extensions should be included. Based on further discussion to identify these costs, Airbus and the FAA agreed that Airbus currently meets the intent of today's rule by performing an evaluation of structure susceptible to fatigue and establishing an LOV prior to the development of WFD. The rule does not require manufacturers to extend LOVs—thus these extensions are not a compliance cost. The FAA does understand that LOV extensions are part of the existing Airbus business practice.

Boeing stated that the most significant costs will be borne by the manufacturer rather than the operator. When the manufacturer has to perform additional fatigue testing to substantiate an operational limit, said the commenter, the costs could be quite significant. Based on further discussion to identify these costs, Boeing and the FAA agreed that, because Boeing is also already engaged in the activities required by this final rule, its additional costs will be minimal.

A later Boeing comment, however, said that the regulatory evaluation summarized in the Technical Document, which was developed by the FAA for the public meeting, does not identify future expenses the Boeing Company will incur. Boeing believes this discounting is not correct because the company still has substantial work to do in providing maintenance programs for repairs and alterations, and in developing LOVs and supportive maintenance actions for post-Amendment 25–45 airplanes. Boeing said that the costs of an airworthiness directive are being attributed to operators, but do not account for manufacturers' costs. A second point made by this commenter was that certain LOVs may be set at a point lower than hoped, simply because the maintenance actions needed to bring that LOV out to a more distant point may be too technically difficult and costly to perform. This could result in a considerable amount of engineering work for Boeing to develop the LOV that, because the maintenance actions are never released, might not result in recompense for Boeing. Boeing said that we are presenting costs as either voluntary compliance for setting LOVs or as airworthiness directive costs for developing maintenance actions.

In discussions, Boeing has informed us that the company will voluntarily do this work to address WFD in its airplanes, with or without the rule. As a result, the rule does not impose costs, and the regulatory evaluation properly does not assign costs to Boeing's voluntary compliance. The rule does not require that design approval holders develop maintenance actions to be performed to support the LOV, nor does the rule require development of LOVs for repairs, alterations, and modifications. If the LOV developed by the design approval holder does specify maintenance actions, the FAA will separately estimate the costs of those

maintenance actions at the time as part of the airworthiness directive notice. Any work done on repairs, alterations, and modifications, because it is not required by the rule, is not accounted for as a cost of the rule. Compliance costs are assumed to be borne by the operators. If manufacturers have incurred costs in developing the maintenance actions for operators to reach LOV, there is nothing that precludes them from being recompensed for that work. The FAA based the analysis of costs in our Initial Regulatory Evaluation on discussions with the AAWG. Because this final rule is significantly different from the NPRM, the agency has re-evaluated these costs, and the results are reflected in the Final Regulatory Evaluation.

d. Cost of Failing To Harmonize Rule

Industry representatives on the AAWG, Airbus, Boeing, and the ATA pointed out that the regulatory evaluation did not consider the cost of failing to harmonize the rule with other airworthiness authorities. Commenters suggested that—if the rule were not harmonized—there would be a substantial negative economic impact with respect to the transfer, lease, or sales of airplanes between the U.S. and other countries. Commenters suggested that bilateral agreements be amended to support the transfer of used airplanes subject to this final rule.

As discussed in section III.K. above, the FAA is working closely with EASA and other national airworthiness authorities to harmonize this final rule as much as possible. Many of the changes to the proposed rule will facilitate such harmonization.

e. Cost To Replace an Airplane

A number of commenters said that the initial regulatory evaluation used replacement costs that are not accurate or justified. According to the ATA, "The assumptions used in the regulatory evaluation ignore the reality that some airlines replace their fleets with new aircraft in most cases, while others (particularly cargo carriers) depend on used aircraft with long remaining lives to support their particular business case." In a related vein, Airbus, the ATA, and an individual commenter said that the regulatory evaluation failed to consider the significant cost to operators of retiring airplanes. Of particular concern was the situation where airplanes that support an operation reach their operational limit, and there are no new airplanes which could fill the same role. The ATA said that the regulatory evaluation ignores factors that operators would take into account when deciding whether to retire an airplane or to seek approval of an extended operational limit but did not define those factors.

In the public meeting on December 11, 2008, a commenter representing United Parcel Service noted that the cost benefit analysis was based only on Boeing airplanes, and said that if the Airbus airplanes were included, there would be one airplane model with an LOV that is actually less than the design service goal in the original NPRM. United Parcel Service commented that operators of those airplanes would be interested in understanding how that economic impact to the residual value of those airplanes was not included in the cost. United Parcel Service also asked, since Boeing had expressed discomfort with the use of the anticipated LOV information that it had originally given the FAA, how the FAA could be comfortable using that information for the regulatory evaluation. Since the public meeting, Boeing has provided updated information about anticipated LOVs for their airplanes. Airbus has provided a table containing updated information on certain Airbus model LOVs and anticipated extensions to LOVs. The FAA uses this updated information in the Final Regulatory Evaluation.

Lynden Air Cargo said that the initial regulatory evaluation did not provide a true economic impact for either design approval holders or operators because it is based upon unknown facts from too few design approval holders and with no input from operators, who will bear 90% of the costs. Lynden Air Cargo provided flight cycle and flight hour data for its L–382G airplanes. Based on an LOV of 75,000 flight hours, Lynden Air Cargo stated that issuance of the "anticipated LOVs," which are included in the Technical Document, would require that Lynden Air Cargo immediately retire three of its six airplanes and, at the Lynden Air Cargo current utilization rate, retire the other three by approximately December 2019. Lynden Air Cargo estimates the cost to replace its six airplanes would range from $120 million to $810 million, if comparable airplanes were available.

Lockheed indicated that the LOV anticipated for the L–382 would be based only on flight hours. Based on flight hours, usage, and current ownership, we do not estimate that any L–382 airplanes will be retired in our 20-year analysis period. Lockheed stated that it will continue to support the L–382 model regardless of whether the FAA issues a WFD rule.

In developing the Final Regulatory Evaluation, the FAA used a commercial fleet data product that identifies the status of airplane hours and cycles. The FAA found only one U.S.-registered airplane currently operating under part 121 with a number of flight cycles exceeding the anticipated LOV for the airplane and only five U.S.-registered airplanes operating under part 121 that exceed 80% of those LOVs.

The economic cost of requiring retirement of an airplane at the anticipated LOV is a central issue in the cost estimate for today's rule. Common business practice is to value assets at the current market value, and the FAA follows this practice in the Final Regulatory Evaluation. In the case of airplanes at or near the end of their commercial lives, this value is quite small. Assigning a cost of purchasing a new airplane to replace an airplane at LOV would be a serious overstatement because it ignores the decline in value as airplanes age.

f. Residual Value of Airplanes

Several commenters, including the ATA, FedEx, United Parcel Service, Airbus, the CAA, Technical Data Analysis, Inc., and Celeris Aerospace of Canada, stated that the initial regulatory evaluation did not consider the impact of the proposal on loans, leases, and residual value of airplanes. They said the rule would have a particularly significant effect on cargo operations, which tend to use older airplanes.

These comments are based on an assumption that LOVs will be established at levels below where significant numbers of airplanes would otherwise be retired.

As discussed previously, the vast majority of airplanes are currently retired well before the LOVs that design approval holders anticipate establishing under this final rule. These retirements are for economic reasons unrelated to today's rule. The FAA expects that future retirement decisions will be made for similar reasons and that this final rule will force retirement of only one airplane that is otherwise reaching the end of its commercial operational life.

We use an appraiser-estimated airplane value when the airplane reaches LOV before retirement. This estimate properly reflects the true value of the asset. To include any other cost estimate would be double counting.

3. "Rotable" Parts

Northwest Airlines commented that it is not clear whether or not airplane life limits (the commenter's term for LOVs) extend to components, such as engine nacelles, passenger and cargo doors, flight controls, and wing-to-body fairings. These components can be

"swapped out," or rotated (they're known in the industry as rotable parts) from one airplane to another. Northwest Airlines said that there is a potential for significant costs associated with rotable parts if they are limited by an airplane's LOV. Operators typically do not track the number of accumulated flight cycles or flight hours for them. Northwest Airlines stated that operators may have to assume the flight cycles or flight hours on affected rotable parts to be equal to the world high-time airplane for that model. This may require that operators ground many airplanes or scrap rotable parts, resulting in significant costs that have not been captured in the regulatory evaluation included in the Technical Document.

The LOV is an airplane-level number. The FAA does not anticipate that rotable parts will be identified by design approval holders as structure susceptible to WFD. This is because the parts typically considered as rotable do not have structural details and elements that are repeated over large areas and operate at the same stress levels. AC 120–YY provides examples of structure in which multiple site damage or multiple element damage could occur. Rotable parts are not included in those examples. As a result, we have determined that rotable parts do not affect the cost of this final rule.

4. Use of LOVs for Financial Evaluations

Airbus expressed concerns similar to those expressed by Boeing and the members of AAWG about lack of uniformity in the manner in which various manufacturers are setting LOVs. The commenter also stated that it was important that the LOVs, and the LOV flight hour or flight cycle numbers, not be used by non-technical people in the finance community to set depreciation schedules, commercial valuations, comparisons, and competitive arguments. Airbus was concerned that such use of non-standardized data could lead to market distortion.

Airbus requested that we not publish LOV tables for each manufacturer's product lines in the rule and its preamble. It stated that this information would much more appropriately be published and updated in the manufacturer's Instructions for Continued Airworthiness for each airplane. Airbus suggested that, if the FAA nevertheless decides that publishing such LOV tables is necessary, then it would be important to develop, in concert with industry, the definitions, criteria, and methodologies to be used, so that resulting LOVs from all sources are consistent.

The FAA has revised the rule to ensure that there is an objective, performance-based standard for developing LOVs, and AC 120–YY has been updated to provide guidance in complying with those standards. The reason that design approval holders may appear to be arriving at different LOV numbers is largely a function of the age of their respective fleets. A design approval holder whose fleet is older will have a much larger body of service experience on which to confidently base an LOV. A design approval holder with a younger fleet might be more conservative when first setting an LOV, because there is not as much service experience data on which to base it. Another factor affecting how a design approval holder goes about setting an LOV is how much fatigue testing has been performed on a particular model.

The FAA appreciates that Airbus supports the intent of the WFD rulemaking, and understands Airbus' concern that LOVs could be misinterpreted by those who "set or approve" the economic life of an airplane. The FAA does not expect, nor intend, the LOV in the WFD final rule to set the economic life of an airplane. The March 18, 2009 edition of *Aviation Daily* reported that Airbus has extended the service goals of the A330–200 and A340–200 and –300. The purpose of publishing manufacturers' LOVs in the regulatory evaluation appendix is to provide clarity, transparency, and reproducibility for the economic analysis. As Airbus requested, the reason for the publication of LOVs is clarified in the Final Regulatory Evaluation. In the regulatory evaluation, the FAA states that it is important to note that manufacturers have changed LOVs based on updated information. Airbus, for instance, sets an initial LOV as a declared point for certification purposes. Periodically, as airplanes are shown to be viable for longer lives, design approval holders put programs in place to extend LOVs well before those utilizations are achieved. The FAA believes that manufacturers will continue this practice into the future and update their airplanes' LOVs. Thus the LOVs used in this regulatory evaluation should not be used as a basis for setting the economic life of an airplane. Based upon history, our estimated costs, which were based upon the current LOVs, may be overstated.

IV. Regulatory Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. The Office of Management and Budget approved these new information collection requirements associated with this final rule and assigned OMB Control Number 2120–0743.

Title: Widespread Fatigue Damage.

Summary: Today's rule consists of regulatory changes pertaining to widespread fatigue damage in transport category airplanes. Some of these changes require new information collection. The new information requirements and the persons required to provide that information are described below.

(1) Amendment of part 26 requires that holders of design approvals for certain existing transport category airplanes establish limits of validity (operational limits) for those airplanes. Those design approval holders are also required to revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness (ICA) to include the LOV.

(2) Amendment of part 26 also requires that design approval holders submit to the FAA a plan detailing how they intend to comply with the new requirements. The compliance plan ensures that design approval holders fully understand the requirements, correct any deficiencies in planning in a timely manner, and provide the information needed by the operators for timely compliance with the rule.

(3) Any person operating an airplane under part 121 or 129 is required to revise its maintenance program to incorporate an Airworthiness Limitations section that includes an LOV. Operators would be prohibited from operating an airplane past that limit.

(4) As an option, any person may apply for an extended LOV for affected airplanes. This option has requirements similar to those imposed on design approval holders for establishing an initial LOV. There may be service information developed that would

support the extended limit and would be documented as airworthiness limitation items. To operate beyond the initial LOV, an operator would have to incorporate the extended limit and any airworthiness limitation items pertaining to widespread fatigue damage into its maintenance program.

Use of Collected Information: These requirements support the information needs of the FAA in finding compliance with the rule by design approval holders and operators.

Average Annual Burden Estimate: The burden would consist of the work necessary to:

- Develop or revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to include the LOV.
- Develop the compliance plan.
- Incorporate the new information into the operator's maintenance program.

Today's rule results in the following annual recordkeeping and reporting burden:

FIGURE 4—RECORDKEEPING AND REPORTING FOR THIS RULE

Documents required to show compliance with the proposed rule	Total labor hours	Total average annual hours	Present value discounted ($2010) cost
FAA-approved revised or new ALS	660	132	$41,674
FAA-approved WFD compliance plan	435	* 435	33,418
FAA-approved maintenance program revision for operators	210	35	12,846
Total	1,305	602	87,938

* This one-time burden will occur in the first 90 days of the compliance period.

The FAA computed the annual recordkeeping burden (in total hours) by analyzing the paperwork needed to satisfy each requirement of the rule. The average cost per hour varies with the number of affected airplanes in each group, the amount of engineering time required to develop the LOV, and the amount of time required for revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness. Other costs associated with the information collection requirements within this rule (in addition to the monetized hourly costs reflected above) are minimal.

In addition to the requirements outlined above, future applicants for either supplemental type certificates or amendments to type certificates that decrease or increase maximum takeoff gross weights would be required to develop a compliance plan for the certification project. The Paperwork Reduction Act compliance for development of these certification plans is covered by a previously approved collection (OMB Control Number 2120–0018) associated with part 21. We estimate the additional burden to include information on a plan for establishing an LOV for these airplanes would be minimal.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this Final Rule. It also includes the final regulatory flexibility determination, the international trade impact assessment, and the unfunded mandates assessment. The FAA suggests readers seeking greater detail read the full regulatory evaluation, a copy of which has been placed in the docket for this rulemaking.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs, and is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order. The rule is also "significant" as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, however, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

The overriding safety concern of today's rule is WFD-related incidents and accidents that have occurred and the continuing discoveries of WFD problems in the fleet. The current approach does not always find WFD before in-flight events occur. Today's rule will establish the necessary steps to prevent WFD in the future by requiring that design approval holders establish LOVs.

With this final rule, design approval holders may continue their work to provide maintenance actions that support the safe operation of airplanes up to LOV. The FAA would proactively issue airworthiness directives mandating those planned maintenance actions rather than reactively issuing emergency airworthiness directives and immediately adopted rules which

require unanticipated inspections and repairs. The FAA estimates that this approach is worth $4.8 million in present value.

In contrast to the NPRM, the final rule total costs are minor. Several significant factors are responsible for the reduction in these costs. First, the final rule does not include the repair, alterations, and modification requirement as in the NPRM. Second, many older airplanes have been retired since the NPRM. Third, due to the comments and conversations with design approval holders, the agency now understands that most LOVs will be set 33% to 180% higher than design service goal rather than at design service goal as was specified in the NPRM. Because of current maintenance programs and voluntary compliance by design approval holders, costs for design approval holders and operators are expected to be minimal. We anticipate that today's rule will result in one airplane retiring sooner than the operator would like, in contrast to the NPRM which predicted that many airplanes would retire sooner. Thus our base case model attributes the cost of this rule to the retirement of that one airplane, because it will reach the anticipated LOV within the 20-year analysis period. This will result in costs of $3.8 million, with a present value of $3.6 million.

Thus, as noted earlier, this final rule's expected present-value benefits of $4.8 million exceed the expected present-value costs of $3.6 million.

FIGURE 5—COMPARISON OF COST ASSUMPTIONS FOR NPRM AND FINAL RULE

NPRM assumptions	NPRM present value costs ($ millions)	Final rule assumptions	Final rule present value costs ($ millions)
Operator Retirement Costs • Initial Operational Limit (IOL) = Design Service Goal (DSG). • 27 airplanes would be retired in the first year of compliance. • Some IOL extensions.	160	Operator Retirement Costs • Limit of validity (LOV) > DSG for many models. • 1 airplane would be retired in the 20-year analysis period. • Few LOV extensions.	3.6
Operator Maintenance Program Costs • WFD maintenance actions[49] were included with extended operational limits. • We assumed some operators would perform maintenance actions.	164	Operator Maintenance Program Costs • With higher LOV, WFD maintenance actions may be necessary and would be mandated by ADs, per existing practice.[50] • Operators' costs to perform maintenance actions are included in cost of ADs.	0
Design Approval Holder (DAH) Costs Assumed 10% of entire costs.	36	DAH Costs Assumed minimal costs because DAHs are voluntarily developing LOVs and maintenance actions.	0
Total Costs	360	Total Costs	3.6

Who is potentially affected by this rulemaking?

- Design approval holders of transport category airplanes with a maximum takeoff gross weight greater than 75,000 pounds.
- Applicants for type certificates of transport category airplanes with a maximum takeoff gross weight greater than 75,000 pounds, if the date of application was before the effective date of the rule.
- Applicants for amendments to type certificates of transport category airplanes with a maximum takeoff gross weight greater than 75,000 pounds, with the exception of those that change the maximum takeoff gross weight of the airplane.
- Applicants or design approval holders for either supplemental type certificates or amendments to type certificates that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds.
- Applicants or design approval holders for either supplemental type certificates or amendments to type certificates that decrease maximum takeoff gross weight from greater than 75,000 pounds to 75,000 pounds or less after the effective date of the rule.
- Applicants for future type certificates, or for either supplemental type certificates or amendments to future type certificates, for all transport category airplanes, after the effective date of the rule.
- U.S. certificate holders and foreign air carriers and foreign persons operating U.S.-registered transport category airplanes under 14 CFR part 121 or 129 with a maximum takeoff gross weight greater than 75,000 pounds.
- Operators of any transport category airplanes certified in the future, regardless of maximum takeoff gross weight, if the date of application was after the effective date of the rule.

Our Cost Assumptions and Sources of Information

- Discount rate = 7%.
- Period of Analysis = 20 years.
- Value of fatality averted = $5.8 million (Source: U.S. Department of Transportation, *Treatment of Value of Life and Injuries in Preparing Economic Evaluations,* February 8, 2008).
- Aircraft Values = 2009 Avitas Blue Book of Jet Aircraft/Industry Consultation.
- Aircraft Fleet Data = OAG Associates Fleet Database.

Alternatives Considered

The FAA considered four alternatives to the proposed rule. These were:

1. Exclude small entities.
2. Extend the compliance deadline for small entities.

[49] Maintenance actions include inspections, modifications, and replacements. Because the extended LOV is not required, operators would have to decide to retire airplanes or perform the maintenance actions with the extended LOV.

[50] These ADs would be issued eventually, even without this rule, because WFD is inevitable and is an unsafe condition. More ADs may need to be written without this rule. If the necessary service information is not developed until after a finding of WFD in service, the resulting ADs are likely to include interim action requirements and have shorter compliance times, as compared with ADs issued based on service information developed as required by this rule.

3. Establish lesser technical requirements for small entities.

4. Expand the requirements To cover more airplanes.

1. Exclude Small Entities

The FAA concluded that excluding small entities from all the requirements of the proposed rule was not justified. The purpose of the proposed rule is to maintain the airworthy operating condition of airplanes regardless of secondary considerations.

2. Extend the Compliance Deadline for Small Entities

The FAA also considered options that would lengthen the compliance period for small operators. The FAA believes time extensions only provide modest cost savings and leave the system safety at risk.

3. Establish Lesser Technical Requirements for Small Entities

The FAA considered establishing lesser technical requirements for small entities. However, the FAA believes the risks are similarly unreasonable for small entities operating airplanes susceptible to WFD, and that the benefits of including small entities justify the cost.

4. Expand the Requirements To Cover More Airplanes

The FAA considered requiring all operators of existing transport category airplanes to comply with the proposed rule. However, the overwhelming majority of passengers and cargo are carried by airplanes with a maximum gross takeoff weight of greater than 75,000 pounds. The 75,000 pound weight cutoff was based on recommendations from the AAWG for WFD rulemaking. Because of this, the FAA decided to restrict compliance to operators of those airplanes.

The FAA concludes the current rule is the preferred alternative because it has benefits exceeding compliance costs and allows for continued operation of certain airplanes only up to the point where existing maintenance actions can no longer ensure that the airplanes are free from WFD.

Benefits of This Rulemaking

The non-quantified benefits include the safe (from WFD) operation of airplanes up to the LOV.

The lower-bound present value benefits of this final rule (the minimum value of a range estimate of benefits) are $4.8 million in present value. These quantified benefits are based on the near elimination of emergency airworthiness directives.

Costs of This Rulemaking

The total incremental costs of this final rule are approximately $3.6 million in present value from the costs of retiring one airplane.

Final Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

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

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

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

The FAA considers that this final rule will not result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination.

First, we will discuss the reasons why the FAA is considering this action. We will follow with a discussion of the objective of, and legal basis for, the final rule. Next, we explain there are no relevant Federal rules which may overlap, duplicate, or conflict with the final rule. Then we will discuss the substantial changes from the proposed to the final rule. Next, we will discuss the comments received about the Initial Regulatory Flexibility Analysis (IRFA). Lastly, we will describe and provide an estimate of the number of small entities affected by the final rule and why the FAA considers that this final rule will not result in a significant economic impact on a substantial number of small entities.

We now discuss the reasons why the FAA is considering this action.

The FAA is issuing this final rule to address the structural problems of aging airplanes known as "widespread fatigue damage" (WFD). WFD is characterized by the simultaneous presence of cracks at multiple structural locations that are of sufficient size and density that the structure will no longer meet its residual strength requirement and could catastrophically fail.

Past examples of WFD occurring in the fleet include:

- The 1988 Aloha 737 accident,
- An in-flight Lockheed Model L–1011 failure of aft pressure bulkhead stringer attach fittings,
- A McDonnell Douglas Model DC–9 aft pressure bulkhead cracks,
- Boeing Models 727 and 737 lap splice cracking,
- Boeing Model 767 aft pressure bulkhead cracking, and
- Boeing Model 747 and Airbus A300 frame cracking.

Because of these past incidents, accidents, and inspection discoveries and others, the FAA has already issued about 100 WFD-related airworthiness directives.

This final rule is being promulgated because the FAA believes the risk of an accident caused by WFD, and the potential collateral damage after such an accident, is too high without implementing today's rule.

We now discuss the objective of, and legal basis for, the final rule. Next, we discuss if there are relevant Federal rules which may overlap, duplicate, or conflict with the final rule.

Title 49 of the United States Code requires the FAA Administrator to consider the following authority:

- Assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. (49 U.S.C. 40101(d)(1).
- Aging Airplane Safety Act of 1991. (49 U.S.C. 44717).
- The FAA Administrator's statutory duty to carry out his or her responsibilities "in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation." (*See* 49 U.S.C. 44701(c)).

Therefore, this final rule will amend Title 14 of the Code of Federal Regulations to require existing design approval holders to establish LOVs and operators of any affected airplane to incorporate those LOVs into maintenance programs of large transport

category airplanes with a maximum takeoff gross weight greater than 75,000 pounds, operating under 14 CFR part 121 and 129. These requirements will also apply to all applicants for type certificates after the effective date of the rule and operators of those airplanes. Today's rule does not require that any maintenance actions be performed to prevent WFD before an airplane reaches its LOV. Any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions, so their costs are not attributable to this final rule.

This final rule will not overlap, duplicate, or conflict with existing Federal Rules.

We now discuss the changes from the proposed to the final rule and the reason the small entity determination in the Final Regulatory Flexibility Analysis (FRFA) has changed.

The FAA has made substantial changes to the WFD NPRM that significantly reduces costs to both small and large business entities. We have eliminated the requirement to evaluate WFD associated with repairs, alterations, and modifications of the baseline airplane structure, except for those mandated by airworthiness directives. This change dramatically reduces the economic impact of the NPRM's estimated compliance costs to small entity operators of part 25 airplanes. Also, in our request for comments, design approval holders responded by providing estimates of LOVs for their affected airplanes. In the NPRM we assumed the LOV will occur at an airplane's design service goal. Based on design approval holder comments LOV, in many cases, occurs anywhere from 33% to 180% beyond the design service goal, depending on the equipment model. An operator can now operate an airplane well past its design service goal and not incur the costs of making the decision to retire or extend the affected airplane's LOV until much later in the airplane's life. The only remaining cost is that we assume operators will retire their airplanes at LOV, rather than incurring the cost of the additional maintenance actions that may be needed for an extended LOV. With the scope of the rule reduced, both in terms of required inspections and in terms of affected airplanes, the economic costs of this final rule are much lower than the costs estimated in the NPRM and in the initial regulatory evaluation.

The FAA will now discuss the one comment received about the Initial Regulatory Flexibility Analysis (IRFA).

In the responses to the IRFA of the NPRM, we received a comment from Lynden Air Cargo. Lynden stated its L–382G airplanes were not included in IRFA. The commenter is correct. The Fleet data services consulted for the initial regulatory evaluation did not carry flight utilization data for L–382Gs, and the FAA was unable to determine the number of accumulated flight cycles or flight hours of Lynden's fleet in comparison to the anticipated LOV for those airplanes. Because of the lack of utilization data, Lynden's fleet was not included in our sample for the IRFA analysis. Lynden Air Cargo has since provided the FAA with utilization information for its L–382G fleet. Lockheed has provided an updated anticipated LOV for the L–382G fleet, based just in hours, and Lynden's entire fleet is below 80% of the LOV. With the base hours less than 80% of LOV, and with the current utilization rates of these airplanes, they will not reach LOV in the 20-year analysis time frame. Therefore the FAA expects no economic impact to Lynden Air Cargo in the analysis period for the final rule.

The FAA will now discuss the methodology used to determine the number of small entities for which the final rule will apply. The FAA will also discuss why the agency considers that this final rule will not result in a significant economic impact on manufacturers of part 25 airplanes.

For aircraft operators and manufacturers, a small entity is defined as one with 1,500 or fewer employees.[51] Since there are operators that met those criteria, the FAA conducted an economic impact assessment to determine if the rule will have a significant economic impact on a substantial number of these operators.

This final rule will become fully effective in 2010. Although the FAA forecasts traffic and air carrier fleets to 2030, too many factors are in play to estimate a future number of small entities, determine if an operator will still be in business, or determine whether that operator will still remain a small business entity. Therefore the agency will use the current U.S. operator's fleet and employment in order to determine the number and impact on small business entities this final rule will affect.

For analysis purposes, the FAA has divided the small entities that might be impacted by this final rule into two major classes, airplane manufacturers and air carriers.

[51] 13 CFR 121.201, Size Standards Used to Define Small Business Concerns, Sector 48–49 Transportation, Subsector 481 Air Transportation.

Currently, U.S. part 25 aircraft manufacturer type certificate holders include the following:

- The Boeing Company.
- Cessna Aircraft Company (a subsidiary of Textron Inc.).
- Raytheon Company.
- Gulfstream Aerospace Corporation (a wholly owned subsidiary of General Dynamics).

All United States part 25 aircraft manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers.

Air carriers potentially affected by the final rule include operators engaged in the following:

- Scheduled air transportation.
- Air courier service.
- Nonscheduled air transportation.

The FAA obtained the number of U.S.-operated airplanes having a maximum takeoff gross weight greater than 75,000 pounds from the OAG Associates Fleet Database (March 2009). This database identifies U.S. operators of affected airplanes by providing airplane age and flight utilization statistics. The FAA used the airplane flight utilization information in the analysis of small entity operator's airplanes affected by this WFD final rule. The FAA obtained annual operators' revenue and employment data from current public filings, the World Aviation Directory, and U.S. DOT Form 41 schedules.

Companies with greater than 1,500 employees were excluded from further analysis. Operators in Chapter XI bankruptcy were also excluded, since the outcomes of such proceedings are unknown. Lastly, we excluded all part 25 turbine-powered airplanes with a maximum takeoff gross weight of 75,000 pounds or less, or with a type certificate issued before January 1, 1958, because these airplanes are not affected by the final rule.

This procedure resulted in a list of airplanes, operated by U.S. operators with less than 1,500 employees, with a gross takeoff weight greater than 75,000 pounds. To this database were added airplane-specific design service goals, LOVs, and airplane residual value fields. The FAA used the design service goals published in the WFD NPRM and later updated them based on FAA and industry input. Manufacturers provided the LOVs. Airplane residual values were obtained from the 2009 Avitas Bluebook of Jet Aircraft and consultations with industry.

Next follows the discussion of the number of small entity operators with airplanes affected by the rule, and how

much it will cost for them to be in compliance.

Today's rule may cause airplanes to be retired, sold, or replaced sooner than an operator would like. Companies make decisions on the retirement, sale, or replacement of airplanes for many reasons. The decision point to sell, retire, or replace an airplane differs across companies. Operators take into account several key factors in their decision on when to retire an aircraft. The following are some of those key factors:

- Maintenance costs.
- Noise levels.
- Fuel consumption.
- Loss of consumer demand.
- Regulation changes.
- Shifting operator business plans.
- Operating costs.

Therefore, a company generally decides to retire, sell, or replace an airplane long before its LOV is reached. Given current airplane utilization rates, the FAA does not expect the final rule to affect companies below 75% of an airplane's LOV. When an airplane's flight utilization (measured in flight cycles or hours) exceeds 75% of LOV, the expectation is that the WFD provisions will become an increasingly important component of the decision to retire the airplane. All U.S. airplanes over 75% LOV currently operated by small business entities are in non-scheduled service. Many of these affected airplanes are being operated by cargo operators and hence have a lower utilization rate than their counterparts in scheduled passenger service.

The FAA discovered that 21 airplanes being operated by eight small entities were over 75% of LOV. For the 21 affected airplanes over 75% of LOV, the FAA analyzed utilization history reports by serial number. Results of this analysis showed that saying that 21 airplanes are over 75% of their LOVs overstates the number of airplanes affected by this final rule, because some of those airplanes listed as active have not accrued utilization statistics for years. The agency has identified 9 out of the 21 affected airplanes that have not accrued utilization for the past two years or longer. If the airplanes are not accumulating flight cycles or hours for years, then given the age of these airplanes, the FAA assumes that these airplanes are parked or retired.

This final rule will impose either the retirement of an airplane at LOV or a set of maintenance changes to extend the LOV for the airplane. In this final regulatory analysis, the assumption is that operators will retire the airplanes at LOV. The airplane retirement cost is the operator's most expensive economic choice based on compliance with the final rule.

The FAA's analysis determined that no small entities currently operate airplanes over 100% of LOV.

One small entity currently operates one airplane between 90–100% of LOV. Four small entities currently operate four airplanes between 80–90% of LOV. Lastly, the database lists four small entities operating seven airplanes between 75–80% of LOV. Table 1 shows these results:

Table 1

Number of Small Entitites & Their Airplanes Operating Near LOV

	Operators	Total Airplanes
Over LOV	0	0
90-100% LOV	1	1
80-90%LOV	4	4
75-80%LOV	4	7

To estimate when an airplane will exceed LOV, the FAA followed these steps: From the March 2009 OAG Associates Fleet database the FAA calculated the average age of U.S.-operated part 25 transport category retired airplanes over time. OAG defines a retired airplane as one that has been retired, scrapped or otherwise destroyed by its owner/operator at the end of the airplane's useful life. The FAA calculated the average age based upon the retired airplanes in the OAG fleet database beginning in the 1940s. On average, part 25 passenger airplanes were operated for 25 years and cargo airplanes were operated for 34 years, and then retired from U.S. service.

For the base case in the regulatory evaluation, the FAA assumed that in year 25 of operation, every affected passenger airplane will convert to cargo service and then retire from cargo service at 34 years. The FAA chose this scenario for the cost model because it captures nearly all of the affected airplanes.

The FAA applied these average ages to the affected airplanes in Table 1 and retired airplanes over the average retirement age of 34 years over the 20-year analysis interval used in the regulatory evaluation. Under this model, the agency assumes retirement of only one Boeing 747 airplane operated by a small business entity, because that airplane will reach its LOV before reaching its average retirement age.

The model estimates one small business entity will retire one airplane soon after the rule is promulgated. This small business entity will need to implement an appropriate WFD program, and either apply for an extended LOV or retire the airplane. For the FRFA, the FAA assumed the affected small entity will retire the airplane.

The FAA estimated the final rule's present value costs to the air carrier based on the 2009 Avitas Bluebook of Jet Aircraft residual value of the airplane forced to retire. The present-value residual value of the affected airplane is $3.6 million. The ratio of this present value cost to annual revenues is 1.28%. The FAA does not consider this impact to be economically significant, and since only one entity is potentially affected, this is not a substantial number of small entities.

The FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging

in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for United States standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

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

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, today's rule does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, the FAA requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. As discussed earlier, the FAA received comments on this subject from the late Senator Stevens, Senator Murkowski, and Everts Air Cargo and has determined that there would not be an adverse effect on intrastate air transportation in Alaska and that regulatory distinctions are not appropriate.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of the order and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant regulatory action" under the executive order because, while it is a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Continued airworthiness.

14 CFR Part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR Parts 121 and 129

Air carriers, Aircraft, Aviation safety, Continued airworthiness, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, parts 25, 26, 121, and 129, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Amend § 25.571 by revising paragraphs (a)(3) introductory text and (b) introductory text to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

(a) * * *

(3) Based on the evaluations required by this section, inspections or other procedures must be established, as necessary, to prevent catastrophic failure, and must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529. The limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV), stated as a number of total accumulated flight cycles or flight hours or both, established by this section must also be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529. Inspection thresholds for the following types of structure must be established based on crack growth analyses and/or tests, assuming the structure contains an initial flaw of the maximum probable size that could exist as a result of manufacturing or service-induced damage:

* * * * *

(b) *Damage-tolerance evaluation.* The evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. Repeated load and static analyses supported by test evidence and (if available) service experience must also be incorporated in the evaluation. Special consideration for widespread fatigue damage must be included where the design is such that this type of damage could occur. An LOV must be established that corresponds to the period of time, stated as a number of total accumulated flight cycles or flight hours or both, during which it is demonstrated that widespread fatigue damage will not occur in the airplane structure. This demonstration must be by full-scale fatigue test evidence. The type certificate may be issued prior to completion of full-scale fatigue testing, provided the Administrator has approved a plan for completing the required tests. In that case, the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529 must specify that no airplane may be operated beyond a number of cycles equal to ½ the number of cycles accumulated on the fatigue test article,

until such testing is completed. The extent of damage for residual strength evaluation at any time within the operational life of the airplane must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand loads (considered as static ultimate loads) corresponding to the following conditions:

* * * * *

■ 3. Amend section H25.4 of Appendix H to part 25 by revising paragraph (a)(1) and adding paragraph (a)(4) to read as follows:

Appendix H to Part 25—Instructions for Continued Airworthiness

* * * * *

H25.4 *Airworthiness Limitations section.*

(a) * * *

(1) Each mandatory modification time, replacement time, structural inspection interval, and related structural inspection procedure approved under § 25.571.

* * * * *

(4) A limit of validity of the engineering data that supports the structural maintenance program (LOV), stated as a total number of accumulated flight cycles or flight hours or both, approved under § 25.571. Until the full-scale fatigue testing is completed and the FAA has approved the LOV, the number of cycles accumulated by the airplane cannot be greater than ½ the number of cycles accumulated on the fatigue test article.

* * * * *

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 4. The authority citation for part 26 continues to read as follows:

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

■ 5. Revise § 26.5 to read as follows:

§ 26.5 Applicability table.

Table 1 of this section provides an overview of the applicability of this part. It provides guidance in identifying what sections apply to various types of entities. The specific applicability of each subpart and section is specified in the regulatory text.

TABLE 1—APPLICABILITY OF PART 26 RULES

	Applicable sections			
	Subpart B EAPAS/FTS	Subpart C widespread fatigue damage	Subpart D fuel tank flammability	Subpart E damage tolerance data
Effective date of rule	December 10, 2007	January 14, 2011	December 26, 2008	January 11, 2008
Existing [1] TC Holders	26.11	26.21	26.33	26.43, 26.45, 26.49
Pending [1] TC Applicants	26.11	26.21	26.37	26.43, 26.45
Future [2] TC applicants	N/A	N/A	N/A	26.43
Existing [1] STC Holders	N/A	26.21	26.35	26.47, 26.49
Pending [1] STC/ATC applicants	26.11	26.21	26.35	26.45, 26.47, 26.49
Future [2] STC/ATC applicants	26.11	26.21	26.35	26.45, 26.47, 26.49
Manufacturers	N/A	N/A	26.39	N/A

[1] As of the effective date of the identified rule.
[2] Application made after the effective date of the identified rule.

■ 6. Add subpart C to read as follows:

Subpart C—Aging Airplane Safety—Widespread Fatigue Damage

Sec.
26.21 Limit of validity.
26.23 Extended limit of validity.

Subpart C—Aging Airplane Safety—Widespread Fatigue Damage

§ 26.21 Limit of validity.

(a) *Applicability.* Except as provided in paragraph (g) of this section, this section applies to transport category, turbine-powered airplanes with a maximum takeoff gross weight greater than 75,000 pounds and a type certificate issued after January 1, 1958, regardless of whether the maximum takeoff gross weight is a result of an original type certificate or a later design change. This section also applies to transport category, turbine-powered airplanes with a type certificate issued after January 1, 1958, if a design change approval for which application is made after January 14, 2011 has the effect of reducing the maximum takeoff gross weight from greater than 75,000 pounds to 75,000 pounds or less.

(b) *Limit of validity.* Each person identified in paragraph (c) of this section must comply with the following requirements:

(1) Establish a limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV) that corresponds to the period of time, stated as a number of total accumulated flight cycles or flight hours or both, during which it is demonstrated that widespread fatigue damage will not occur in the airplane. This demonstration must include an evaluation of airplane structural configurations and be supported by test evidence and analysis at a minimum and, if available, service experience, or service experience and teardown inspection results, of high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures. The airplane structural configurations to be evaluated include—

(i) All model variations and derivatives approved under the type certificate; and

(ii) All structural modifications to and replacements for the airplane structural configurations specified in paragraph (b)(1)(i) of this section, mandated by airworthiness directives as of January 14, 2011.

(2) If the LOV depends on performance of maintenance actions for which service information has not been mandated by airworthiness directive as of January 14, 2011, submit the following to the FAA Oversight Office:

(i) For those maintenance actions for which service information has been issued as of the applicable compliance date specified in paragraph (c) of this section, a list identifying each of those actions.

(ii) For those maintenance actions for which service information has not been issued as of the applicable compliance date specified in paragraph (c) of this section, a list identifying each of those actions and a binding schedule for providing in a timely manner the necessary service information for those actions. Once the FAA Oversight Office approves this schedule, each person identified in paragraph (c) of this section must comply with that schedule.

(3) Unless previously accomplished, establish an Airworthiness Limitations section (ALS) for each airplane structural configuration evaluated under paragraph (b)(1) of this section.

(4) Incorporate the applicable LOV established under paragraph (b)(1) of this section into the ALS for each airplane structural configuration evaluated under paragraph (b)(1) and submit it to the FAA Oversight Office for approval.

(c) *Persons who must comply and compliance dates.* The following persons must comply with the requirements of paragraph (b) of this section by the specified date.

(1) Holders of type certificates (TC) of airplane models identified in Table 1 of this section: No later than the applicable date identified in Table 1 of this section.

(2) Applicants for TCs, if the date of application was before January 14, 2011: No later than the latest of the following dates:

(i) January 14, 2016;

(ii) The date the certificate is issued; or

(iii) The date specified in the plan approved under § 25.571(b) for completion of the full-scale fatigue testing and demonstrating that widespread fatigue damage will not occur in the airplane structure.

(3) Applicants for amendments to TCs, with the exception of amendments to TCs specified in paragraphs (c)(6) or (c)(7) of this section, if the original TC was issued before January 14, 2011: No later than the latest of the following dates:

(i) January 14, 2016;

(ii) The date the amended certificate is issued; or

(iii) The date specified in the plan approved under § 25.571(b) for completion of the full-scale fatigue testing and demonstrating that widespread fatigue damage will not occur in the airplane structure.

(4) Applicants for amendments to TCs, with the exception of amendments to TCs specified in paragraphs (c)(6) or (c)(7) of this section, if the application for the original TC was made before January 14, 2011 but the TC was not issued before January 14, 2011: No later than the latest of the following dates:

(i) January 14, 2016;

(ii) The date the amended certificate is issued; or

(iii) The date specified in the plan approved under § 25.571(b) for completion of the full-scale fatigue testing and demonstrating that widespread fatigue damage will not occur in the airplane structure.

(5) Holders of either supplemental type certificates (STCs) or amendments to TCs that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds: No later than July 14, 2012.

(6) Applicants for either STCs or amendments to TCs that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds: No later than the latest of the following dates:

(i) July 14, 2012;

(ii) The date the certificate is issued; or

(iii) The date specified in the plan approved under § 25.571(b) for completion of the full-scale fatigue testing and demonstrating that widespread fatigue damage will not occur in the airplane structure.

(7) Applicants for either STCs or amendments to TCs that decrease maximum takeoff gross weights from greater than 75,000 pounds to 75,000 pounds or less, if the date of application was after January 14, 2011: No later than the latest of the following dates:

(i) July 14, 2012;

(ii) The date the certificate is issued; or

(iii) The date specified in the plan approved under § 25.571(b) for completion of the full-scale fatigue testing and demonstrating that widespread fatigue damage will not occur in the airplane structure.

(d) *Compliance plan.* Each person identified in paragraph (e) of this section must submit a compliance plan consisting of the following:

(1) A proposed project schedule, identifying all major milestones, for meeting the compliance dates specified in paragraph (c) of this section.

(2) A proposed means of compliance with paragraphs (b)(1) through (b)(4) of this section.

(3) A proposal for submitting a draft of all compliance items required by paragraph (b) of this section for review by the FAA Oversight Office not less than 60 days before the compliance date specified in paragraph (c) of this section, as applicable.

(4) A proposal for how the LOV will be distributed.

(e) *Compliance dates for compliance plans.* The following persons must submit the compliance plan described in paragraph (d) of this section to the FAA Oversight Office by the specified date.

(1) Holders of type certificates: No later than April 14, 2011.

(2) Applicants for TCs and amendments to TCs, with the exception of amendments to TCs specified in paragraphs (e)(4), (e)(5), or (e)(6) of this section, if the date of application was before January 14, 2011 but the TC or TC amendment was not issued before January 14, 2011: No later than April 14, 2011.

(3) Holders of either supplemental type certificates or amendments to TCs that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds: No later than April 14, 2011.

(4) Applicants for either STCs or amendments to TCs that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds, if the date of application was before January 14, 2011: No later than April 14, 2011.

(5) Applicants for either STCs or amendments to TCs that increase maximum takeoff gross weights from 75,000 pounds or less to greater than 75,000 pounds, if the date of application is on or after January 14, 2011: Within 90 days after the date of application.

(6) Applicants for either STCs or amendments to TCs that decrease maximum takeoff gross weights from greater than 75,000 pounds to 75,000 pounds or less, if the date of application is on or after January 14, 2011: Within 90 days after the date of application.

(f) *Compliance plan implementation.* Each affected person must implement the compliance plan as approved in compliance with paragraph (d) of this section.

(g) *Exceptions.* This section does not apply to the following airplane models:

(1) Bombardier BD–700.

(2) Bombardier CL–44.

(3) Gulfstream GV.

(4) Gulfstream GV–SP.

(5) British Aerospace, Aircraft Group, and Societe Nationale Industrielle Aerospatiale Concorde Type 1.

(6) British Aerospace (Commercial Aircraft) Ltd., Armstrong Whitworth Argosy A.W. 650 Series 101.

(7) British Aerospace Airbus, Ltd., BAC 1–11.

(8) BAE Systems (Operations) Ltd., BAe 146.

(9) BAE Systems (Operations) Ltd., Avro 146.

(10) Lockheed 300–50A01 (USAF C141A).

(11) Boeing 707.

(12) Boeing 720.

(13) deHavilland D.H. 106 Comet 4C.

(14) Ilyushin Aviation IL–96T.

(15) Bristol Aircraft Britannia 305.

(16) Avions Marcel Dassault-Breguet Aviation Mercure 100C.

(17) Airbus Caravelle.

(18) D & R Nevada, LLC, Convair Model 22.

(19) D & R Nevada, LLC, Convair Model 23M.

TABLE 1—COMPLIANCE DATES FOR AFFECTED AIRPLANES

Airplane model (all existing [1] models)	Compliance date—(months after January 14, 2011)
Airbus:	
A300 Series, A310 Series, A300–600 Series	18
A318 Series	48
A319 Series	48
A320 Series	48
A321 Series	48
A330–200, –200 Freighter, –300 Series	48
A340–200, –300, –500, –600 Series	48
A380–800 Series	60
Boeing:	
717	48
727 (all series)	18
737 (Classics): 737–100, –200, –200C, –300, –400, –500	18
737 (NG): 737–600, –700, –700C, –800, –900, –900ER	48
747 (Classics): 747–100, –100B, –100B SUD, –200B, -200C, –200F, –300, 747SP, 747SR	18
747–400: 747–400, –400D, –400F	48
757	48
767	48
777–200, –300	48
777–200LR, 777–300ER, 777F	60
Bombardier:	
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900)	60
Embraer:	
ERJ 170	60
ERJ 190	60
Fokker:	
F.28 Mark 0070, Mark 0100	18
Lockheed:	
L–1011	18
188	18
382 (all series)	18
McDonnell Douglas:	
DC–8, –8F	18
DC–9	18
MD–80 (DC–9–81, –82, –83, –87, MD–88)	18
MD–90	48
DC–10	18
MD–10	48
MD–11, –11F	48
All Other Airplane Models Listed on a Type Certificate as of January 14, 2011	60

[1] Type certificated as of January 14, 2011.

§ 26.23 Extended limit of validity.

(a) *Applicability.* Any person may apply to extend a limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV) approved under § 25.571 of this subchapter, § 26.21, or this section. Extending an LOV is a major design change. The applicant must comply with the relevant provisions of subparts D or E of part 21 of this subchapter and paragraph (b) of this section.

(b) *Extended limit of validity.* Each person applying for an extended LOV must comply with the following requirements:

(1) Establish an extended LOV that corresponds to the period of time, stated as a number of total accumulated flight cycles or flight hours or both, during which it is demonstrated that widespread fatigue damage will not occur in the airplane. This demonstration must include an evaluation of airplane structural configurations and be supported by test evidence and analysis at a minimum and, if available, service experience, or service experience and teardown inspection results, of high-time airplanes of similar structural design, accounting for differences in operating conditions and procedures. The airplane structural configurations to be evaluated include—

(i) All model variations and derivatives approved under the type certificate for which approval for an extension is sought; and

(ii) All structural modifications to and replacements for the airplane structural configurations specified in paragraph (b)(1)(i) of this section, mandated by airworthiness directive, up to the date of approval of the extended LOV.

(2) Establish a revision or supplement, as applicable, to the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness required by § 25.1529 of this subchapter, and submit it to the FAA Oversight Office for approval. The revised ALS or supplement to the ALS must include the applicable extended LOV established under paragraph (b)(1) of this section.

(3) Develop the maintenance actions determined by the WFD evaluation performed in paragraph (b)(1) of this section to be necessary to preclude WFD from occurring before the airplane reaches the proposed extended LOV. These maintenance actions must be documented as airworthiness limitation items in the ALS and submitted to the FAA Oversight Office for approval.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 7. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 8. Add new § 121.1115 to read as follows:

§ 121.1115 Limit of validity.

(a) *Applicability.* This section applies to certificate holders operating any transport category, turbine-powered airplane with a maximum takeoff gross weight greater than 75,000 pounds and a type certificate issued after January 1, 1958, regardless of whether the maximum takeoff gross weight is a result of an original type certificate or a later design change. This section also applies to certificate holders operating any transport category, turbine-powered airplane with a type certificate issued after January 1, 1958, regardless of the maximum takeoff gross weight, for which a limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV) is required in accordance with § 25.571 or § 26.21 of this chapter after January 14, 2011.

(b) *Limit of validity.* No certificate holder may operate an airplane identified in paragraph (a) of this section after the applicable date identified in Table 1 of this section unless an Airworthiness Limitations section approved under Appendix H to part 25 or § 26.21 of this chapter is incorporated into its maintenance program. The ALS must—

(1) Include an LOV approved under § 25.571 or § 26.21 of this chapter, as applicable, except as provided in paragraph (f) of this section; and

(2) Be clearly distinguishable within its maintenance program.

(c) *Operation of airplanes excluded from § 26.21.* No certificate holder may operate an airplane identified in § 26.21(g) of this chapter after July 14, 2013, unless an Airworthiness Limitations section approved under Appendix H to part 25 or § 26.21 of this chapter is incorporated into its maintenance program. The ALS must—

(1) Include an LOV approved under § 25.571 or § 26.21 of this chapter, as applicable, except as provided in paragraph (f) of this section; and

(2) Be clearly distinguishable within its maintenance program.

(d) *Extended limit of validity.* No certificate holder may operate an airplane beyond the LOV, or extended LOV, specified in paragraph (b)(1), (c), (d), or (f) of this section, as applicable, unless the following conditions are met:

(1) An ALS must be incorporated into its maintenance program that—

(i) Includes an extended LOV and any widespread fatigue damage airworthiness limitation items approved under § 26.23 of this chapter; and

(ii) Is approved under § 26.23 of this chapter.

(2) The extended LOV and the airworthiness limitation items pertaining to widespread fatigue damage must be clearly distinguishable within its maintenance program.

(e) *Principal Maintenance Inspector approval.* Certificate holders must submit the maintenance program revisions required by paragraphs (b), (c), and (d) of this section to the Principal Maintenance Inspector for review and approval.

(f) *Exception.* For any airplane for which an LOV has not been approved as of the applicable compliance date specified in paragraph (c) or Table 1 of this section, instead of including an approved LOV in the ALS, an operator must include the applicable default LOV specified in Table 1 or Table 2 of this section, as applicable, in the ALS.

TABLE 1—AIRPLANES SUBJECT TO § 26.21

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus—Existing[1] Models Only:		
A300 B2–1A, B2–1C, B2K–3C, B2–203	30	48,000 FC
A300 B4–2C, B4–103	30	40,000 FC
A300 B4–203	30	34,00 FC
A300–600 Series	30	30,000 FC/67,500 FH
A310–200 Series	30	40,000 FC/60,000 FH
A310–300 Series	30	35,000 FC/60,000 FH
A318 Series	60	48,000 FC/60,000 FH
A319 Series	60	48,000 FC/60,000 FH
A320–100 Series	60	48,000 FC/48,000 FH
A320–200 Series	60	48,000 FC/60,000 FH
A321 Series	60	48,000 FC/60,000 FH
A330–200, –300 Series (except WV050 family) (non enhanced)	60	40,000 FC/60,000 FH
A330–200, –300 Series WV050 family (enhanced)	60	33,000 FC/100,000 FH
A330–200 Freighter Series	60	*See* NOTE.
A340–200, –300 Series (except WV 027 and WV050 family) (non enhanced)	60	20,000 FC/80,000 FH
A340–200, –300 Series WV 027 (non enhanced)	60	30,000 FC/60,000 FH
A340–300 Series WV050 family (enhanced)	60	20,000 FC/100,000 FH
A340–500, –600 Series	60	16,600 FC/100,000 FH
A380–800 Series	72	*See* NOTE.
Boeing—Existing[1] Models Only:		
717	60	60,000 FC/60,000 FH
727 (all series)	30	60,000 FC
737 (Classics): 737–100, –200, –200C, –300, –400, –500	30	75,000 FC
737 (NG): 737–600, –700, –700C, –800, –900, –900ER	60	75,000 FC
747 (Classics): 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, 747SR.	30	20,000 FC
747–400: 747–400, –400D, –400F	60	20,000 FC
757	60	50,000 FC
767	60	50,000 FC
777–200, –300	60	40,000 FC

TABLE 1—AIRPLANES SUBJECT TO § 26.21—Continued

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
777–200LR, 777–300ER	72	40,000 FC
777F	72	11,000 FC
Bombardier—Existing[1] Models Only:		
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900)	72	60,000 FC
Embraer—Existing[1] Models Only:		
ERJ 170	72	*See* NOTE.
ERJ 190	72	*See* NOTE.
Fokker—Existing[1] Models Only:		
F.28 Mark 0070, Mark 0100	30	90,000 FC
Lockheed—Existing[1] Models Only:		
L–1011	30	36,000 FC
188	30	26,600 FC
382 (all series)	30	20,000 FC/50,000 FH
McDonnell Douglas—Existing[1] Models Only:		
DC–8, –8F	30	50,000 FC/50,000 FH
DC–9 (except for MD–80 models)	30	100,000 FC/100,000 FH
MD–80 (DC–9–81, –82, –83, –87, MD–88)	30	50,000 FC/50,000 FH
MD–90	60	60,000 FC/90,000 FH
DC–10–10, –15	30	42,000 FC/60,000 FH
DC–10–30, –40, –10F, –30F, –40F	30	30,000 FC/60,000 FH
MD–10–10F	60	42,000 FC/60,000 FH
MD–10–30F	60	30,000 FC/60,000 FH
MD–11, MD–11F	60	20,000 FC/60,000 FH
Maximum Takeoff Gross Weight Changes:		
All airplanes whose maximum takeoff gross weight has been decreased to 75,000 pounds or below after January 14, 2011 or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate.	30, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.
All Other Airplane Models (TCs and amended TCs) not Listed in Table 2	72, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.

[1] Type certificated as of January 14, 2011.

Note: Airplane operation limitation is stated in the Airworthiness Limitation section.

TABLE 2—AIRPLANES EXCLUDED FROM § 26.21

Airplane model	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus:	
Caravelle	15,000 FC/24,000 FH
Avions Marcel Dassault:	
Breguet Aviation Mercure 100C	20,000 FC/16,000 FH
Boeing:	
Boeing 707 (-100 Series and -200 Series)	20,000 FC
Boeing 707 (-300 Series and -400 Series)	20,000 FC
Boeing 720	30,000 FC
Bombardier:	
CL–44D4 and CL–44J	20,000 FC
BD–700	15,000 FH
Bristol Aeroplane Company:	
Britannia 305	10,000 FC
British Aerospace Airbus, Ltd.:	
BAC 1–11 (all models)	85,000 FC
British Aerospace (Commercial Aircraft) Ltd.:	
Armstrong Whitworth Argosy A.W. 650 Series 101	20,000 FC
BAE Systems (Operations) Ltd.:	
BAe 146–100A (all models)	50,000 FC
BAe 146–200–07	50,000 FC
BAe 146–200–07 Dev	50,000 FC
BAe 146–200–11	50,000 FC
BAe 146–200–07A	47,000 FC
BAe 146–200–11 Dev	43,000 FC

TABLE 2—AIRPLANES EXCLUDED FROM § 26.21—Continued

Airplane model	Default LOV [flight cycles (FC) or flight hours (FH)]
BAe 146–300 (all models)	40,000 FC
Avro 146–RJ70A (all models)	40,000 FC
Avro 146–RJ85A and 146–RJ100A (all models)	50,000 FC
D & R Nevada, LLC:	
Convair Model 22	1,000 FC/1,000 FH
Convair Model 23M	1,000 FC/1,000 FH
deHavilland Aircraft Company, Ltd.:	
D.H. 106 Comet 4C	8,000 FH
Gulfstream:	
GV	40,000 FH
GV–SP	40,000 FH
Ilyushin Aviation Complex:	
IL–96T	10,000 FC/30,000 FH
Lockheed:	
300–50A01 (USAF C 141A)	20,000 FC

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 9. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 10. Add new § 129.115 to read as follows:

§ 129.115 Limit of validity.

(a) *Applicability.* This section applies to foreign air carriers or foreign persons operating any U.S.-registered transport category, turbine-powered airplane with a maximum takeoff gross weight greater than 75,000 pounds and a type certificate issued after January 1, 1958, regardless of whether the maximum takeoff gross weight is a result of an original type certificate or a later design change. This section also applies to foreign air carriers or foreign persons operating any other U.S.-registered transport category, turbine-powered airplane with a type certificate issued after January 1, 1958, regardless of the maximum takeoff gross weight, for which a limit of validity of the engineering data that supports the structural maintenance program (hereafter referred to as LOV) is required in accordance with § 25.571 or § 26.21 of this chapter after January 14, 2011.

(b) *Limit of validity.* No foreign air carrier or foreign person may operate a U.S.-registered airplane identified in paragraph (a) of this section after the applicable date identified in Table 1 of this section, unless an Airworthiness Limitations section (ALS) approved under Appendix H to part 25 or § 26.21 of this chapter is incorporated into its maintenance program. The ALS must—

(1) Include an LOV approved under § 25.571 or § 26.21 of this chapter, as applicable, except as provided in paragraph (f) of this section; and

(2) Be clearly distinguishable within its maintenance program.

(c) *Operation of airplanes excluded from § 26.21.* No certificate holder may operate an airplane identified in § 26.21(g) of this chapter after July 14, 2013, unless an ALS approved under Appendix H to part 25 or § 26.21 of this chapter is incorporated into its maintenance program. The ALS must—

(1) Include an LOV approved under § 25.571 or § 26.21 of this chapter, as applicable, except as provided in paragraph (f) of this section; and

(2) Be clearly distinguishable within its maintenance program

(d) *Extended limit of validity.* No foreign air carrier or foreign person may operate an airplane beyond the LOV or extended LOV specified in paragraph (b)(1), (c), (d), or (f) of this section, as applicable, unless the following conditions are met:

(1) An ALS must be incorporated into its maintenance program that—

(i) Includes an extended LOV and any widespread fatigue damage airworthiness limitation items (ALIs) approved under § 26.23 of this chapter; and

(ii) Is approved under § 26.23 of this chapter;

(2) The extended LOV and the airworthiness limitation items pertaining to widespread fatigue damage must be clearly distinguishable within its maintenance program.

(e) *Principal Maintenance Inspector approval.* Foreign air carriers or foreign persons must submit the maintenance program revisions required by paragraphs (b), (c), and (d) of this section to the Principal Maintenance Inspector or Flight Standards International Field Office for review and approval.

(f) *Exception.* For any airplane for which an LOV has not been approved as of the applicable compliance date specified in paragraph (c) or Table 1 of this section, instead of including an approved LOV in the ALS, an operator must include the applicable default LOV specified in Table 1 or Table 2 of this section, as applicable, in the ALS.

TABLE 1—AIRPLANES SUBJECT TO § 26.21

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus—Existing [1] Models Only:		
A300 B2–1A, B2–1C, B2K–3C, B2–203	30	48,000 FC
A300 B4–2C, B4–103	30	40,000 FC
A300 B4–203	30	34,000 FC
A300–600 Series	30	30,000 FC/67,500 FH

TABLE 1—AIRPLANES SUBJECT TO § 26.21—Continued

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
A310–200 Series	30	40,000 FC/60,000 FH
A310–300 Series	30	35,000 FC/60,000 FH
A318 Series	60	48,000 FC/60,000 FH
A319 Series	60	48,000 FC/60,000 FH
A320–100 Series	60	48,000 FC/48,000 FH
A320–200 Series	60	48,000 FC/60,000 FH
A321 Series	60	48,000 FC/60,000 FH
A330–200, –300 Series (except WV050 family) (non enhanced)	60	40,000 FC/60,000 FH
A330–200, –300 Series WV050 family (enhanced)	60	33,000 FC/100,000 FH
A330–200 Freighter Series	60	*See* NOTE.
A340–200, –300 Series (except WV 027 and WV050 family) (non enhanced)	60	20,000 FC/80,000 FH
A340–200, –300 Series WV 027 (non enhanced)	60	30,000 FC/60,000 FH
A340–300 Series WV050 family (enhanced)	60	20,000 FC/100,000 FH
A340–500, –600 Series	60	16,600 FC/100,000 FH
A380–800 Series	72	*See* NOTE.
Boeing—Existing [1] Models Only:		
717	60	60,000 FC/60,000 FH
727 (all series)	30	60,000 FC
737 (Classics): 737–100, –200, –200C, –300, –400, –500	30	75,000 FC
737 (NG): 737–600, –700, –700C, –800, –900, –900ER	60	75,000 FC
747 (Classics): 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, 747SR.	30	20,000 FC
747–400: 747–400, –400D, –400F	60	20,000 FC
757	60	50,000 FC
767	60	50,000 FC
777–200, –300	60	40,000 FC
777–200LR, 777–300ER	72	40,000 FC
777F	72	11,000 FC
Bombardier—Existing [1] Models Only:		
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900)	72	60,000 FC
Embraer—Existing [1] Models Only:		
ERJ 170	72	*See* NOTE.
ERJ 190	72	*See* NOTE.
Fokker—Existing [1] Models Only:		
F.28 Mark 0070, Mark 0100	30	90,000 FC
Lockheed—Existing [1] Models Only:		
L–1011	30	36,000 FC
188	30	26,600 FC
382 (all series)	30	20,000 FC/50,000 FH
McDonnell Douglas—Existing [1] Models Only:		
DC–8, –8F	30	50,000 FC/50,000 FH
DC–9 (except for MD–80 series)	30	100,000 FC/100,000 FH
MD–80 (DC–9–81, –82, –83, –87, MD–88)	30	50,000 FC/50,000 FH
MD–90	60	60,000 FC/90,000 FH
DC–10–10, –15	30	42,000 FC/60,000 FH
DC–10–30, –40, –10F, –30F, –40F	30	30,000 FC/60,000 FH
MD–10–10F	60	42,000 FC/60,000 FH
MD–10–30F	60	30,000 FC/60,000 FH
MD–11, MD–11F	60	20,000 FC/60,000 FH
Maximum Takeoff Gross Weight Changes	30, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.
All airplanes whose maximum takeoff gross weight has been decreased to 75,000 pounds or below after January 14, 2011 or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate.		
All Other Airplane Models (TCs and amended TCs) not Listed in Table 2	72, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.

[1] Type certificated as of January 14, 2011.

Note: Airplane operation limitation is stated in the Airworthiness Limitation section.

TABLE 2—AIRPLANES EXCLUDED FROM § 26.21

Airplane model	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus:	
Caravelle	15,000 FC/24,000 FH
Avions Marcel Dassault:	
Breguet Aviation Mercure 100C	20,000 FC/16,000 FH
Boeing:	
Boeing 707 (–100 Series and –200 Series)	20,000 FC
Boeing 707 (–300 Series and –400 Series)	20,000 FC
Boeing 720	30,000 FC
Bombardier:	
CL–44D4 and CL–44J	20,000 FC
BD–700	15,000 FH
Bristol Aeroplane Company:	
Britannia 305	10,000 FC
British Aerospace Airbus, Ltd.:	
BAC 1–11 (all models)	85,000 FC
British Aerospace (Commercial Aircraft) Ltd.:	
Armstrong Whitworth Argosy A.W. 650 Series 101	20,000 FC
BAE Systems (Operations) Ltd.:	
BAe 146–100A (all models)	50,000 FC
BAe 146–200–07	50,000 FC
BAe 146–200–07 Dev	50,000 FC
BAe 146–200–11	50,000 FC
BAe 146–200–07A	47,000 FC
BAe 146–200–11 Dev	43,000 FC
BAe 146–300 (all models)	40,000 FC
Avro 146–RJ70A (all models)	40,000 FC
Avro 146–RJ85A and 146–RJ100A (all models)	50,000 FC
D & R Nevada, LLC:	
Convair Model 22	1,000 FC/1,000 FH
Convair Model 23M	1,000 FC/1,000 FH
deHavilland Aircraft Company, Ltd.:	
D.H. 106 Comet 4C	8,000 FH
Gulfstream:	
GV	40,000 FH
GV–SP	40,000 FH
Ilyushin Aviation Complex:	
IL–96T	10,000 FC/30,000 FH
Lockheed:	
300–50A01 (USAF C 141A)	20,000 FC

Issued in Washington, DC, on October 28, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–28363 Filed 11–12–10; 8:45 am]

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Federal Register

Monday,
November 15, 2010

Part III

Securities and Exchange Commission

17 CFR Part 240

Risk Management Controls for Brokers or Dealers With Market Access; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–63241; File No. S7–03–10]

RIN 3235–AK53

Risk Management Controls for Brokers or Dealers With Market Access

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is adopting new Rule 15c3–5 under the Securities Exchange Act of 1934 ("Exchange Act"). Rule 15c3–5 will require brokers or dealers with access to trading securities directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, and broker-dealer operators of an ATS that provide access to trading securities directly on their ATS to a person other than a broker or dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and ensure compliance with all regulatory requirements that are applicable in connection with market access. The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker or dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports.

The financial and regulatory risk management controls and supervisory procedures required by Rule 15c3–5 must be under the direct and exclusive control of the broker or dealer with market access, with limited exceptions specified in the Rule that permit reasonable allocation of certain controls and procedures to another registered broker or dealer that, based on its position in the transaction and relationship with the ultimate customer, can more effectively implement them. In addition, a broker or dealer with market access will be required to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues. Among other things, the broker or dealer will be required to review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures and document that review. The review will be required to be conducted in accordance with written procedures and will be required to be documented. In addition, the Chief Executive Officer (or equivalent officer) of the broker or dealer will be required, on an annual basis, to certify that the risk management controls and supervisory procedures comply with Rule 15c3–5, and that the regular review described above has been conducted.

DATES: *Effective Date:* January 14, 2011.

Compliance Date: July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Marc F. McKayle, Special Counsel, at (202) 551–5633; Theodore S. Venuti, Special Counsel, at (202) 551–5658; and Daniel Gien, Attorney, at (202) 551–5747, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Background

Given the increased automation of trading on securities exchanges and ATSs today, and the growing popularity of sponsored or direct market access arrangements where broker-dealers allow customers to trade in those markets electronically using the broker-dealers' market participant identifiers ("MPID"), the Commission is concerned that the various financial and regulatory risks that arise in connection with such access may not be appropriately and effectively controlled by all broker-dealers. New Rule 15c3–5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.

On January 26, 2010, Proposed Rule 15c3–5 was published for public comment in the **Federal Register**.[1] The Commission received 47 comment letters on Proposed Rule 15c3–5 from broker-dealers, markets, institutional and individual investors, technology providers, and other market participants.[2] Nearly all of the commenters supported the overarching goal of the proposed rulemaking—to assure that broker-dealers with market access have effective controls and procedures reasonably designed to manage the financial, regulatory, and other risks of that activity. As further discussed below, however, several commenters recommended that the proposal be amended or clarified in certain respects. As a result, the Commission is adopting Rule 15c3–5 substantially as proposed, but with certain narrow modifications as discussed below. As proposed, Rule 15c3–5 would require brokers or dealers with access to trading directly on an exchange or ATS, including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The development and growth of automated electronic trading have allowed ever increasing volumes of securities transactions across the multitude of trading systems that constitute the U.S. national market system. In fact, much of the order flow in today's marketplace is typified by high-speed, high-volume, automated algorithmic trading, and orders are routed for execution in milliseconds or even microseconds. Over the past year, the Commission has taken a broad and critical look at market structure practices in light of the rapid development in trading technology and strategies. The Commission has proposed several rulemakings,

[1] *See* Securities Exchange Act Release No. 61379 (January 19, 2010), 75 FR 4007 (January 26, 2010) (File No. S7–03–10) ("Proposing Release").

[2] Copies of comments received on the proposal are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7-03-10/s70310.shtml,* and in the Commission's Public Reference Room at its Washington, DC headquarters.

including this rulemaking, to address specific vulnerabilities in the current market structure.[3] In addition, this past January, the Commission published a concept release on equity market structure designed to further the Commission's broad review of market structure to assess whether its rules have kept pace with, among other things, changes in trading technology and practices.[4]

The recent proliferation of sophisticated, high-speed trading technology has changed the way broker-dealers trade for their own accounts and as agents for their customers.[5] In addition, customers—particularly sophisticated institutions—have themselves begun using technological tools to place orders and trade on markets with little or no substantive intermediation by their broker-dealers. This, in turn, has given rise to the increased use and reliance on "direct market access" or "sponsored access" arrangements.[6]

Under these arrangements, the broker-dealer allows its customer—whether an institution such as a hedge fund, mutual fund, bank or insurance company, an individual, or another broker-dealer—to use the broker-dealer's MPID or other mechanism or mnemonic used to identify a market participant for the purposes of electronically accessing an exchange or ATS. Generally, direct market access refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to reaching the trading center. In contrast, sponsored access generally refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center that bypass the broker-dealer's trading system and are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider.[7] "Unfiltered" or "naked" access is generally understood to be a subset of sponsored access, where pre-trade filters or controls are not applied to orders before such orders are submitted to an exchange or ATS. In all cases, however, whether the broker-dealer is trading for its own account, is trading for customers through more traditionally intermediated brokerage arrangements, or is allowing customers direct market access or sponsored access, the broker-dealer with market access is legally responsible for all trading activity that occurs under its MPID.[8]

Certain market participants may find the wide range of access arrangements beneficial. For instance, facilitating electronic access to markets can provide broker-dealers, as well as exchanges and ATSs, opportunities to compete for greater volumes and a wider variety of order flow. For a broker-dealer's customers, which could include hedge funds, institutional investors, individual investors, and other broker-dealers, such arrangements may reduce latencies and facilitate more rapid trading,[9] help preserve the confidentiality of sophisticated, proprietary trading strategies, and reduce trading costs by lowering operational costs,[10] commissions, and exchange fees.[11]

Current self-regulatory organization ("SRO") rules and interpretations governing electronic access to markets have sought to address the risks of this activity.[12] However, the Commission believes that more comprehensive and effective standards that apply consistently across the markets are needed to effectively manage the financial, regulatory, and other risks, such as legal and operational risks, associated with market access. These risks—whether they involve the potential breach of a credit or capital limit, the submission of erroneous orders as a result of computer malfunction or human error, the failure to comply with SEC or exchange trading rules, the failure to detect illegal conduct, or otherwise—are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or sponsored access arrangements.

The Commission is particularly concerned about the quality of broker-dealer risk controls in sponsored access arrangements, where the customer order flow does not pass through the broker-dealer's systems prior to entry on an exchange or ATS. The Commission understands that, in some cases, the broker-dealer providing sponsored access may not utilize any pre-trade risk management controls (*i.e.* "unfiltered" or "naked" access),[13] and thus could be unaware of the trading activity occurring under its market identifier and have no mechanism to control it.

[3] *See, e.g.,* Securities Exchange Act Release Nos. 60684 (September 18, 2009), 74 FR 48632 (September 23, 2009) (Proposal to Eliminate Flash Order Exception from Rule 602 of Regulation NMS) (File No. S7–21–09); 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009) (Proposal to Regulate Non-Public Trading Interest) (File No. S7–27–09); 61908 (April 14, 2010), 75 FR 21456 (April 23, 2010) (Proposed Large Trader Reporting System) (File No. S7–10–10); and 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (Proposed Consolidated Audit Trail) (File No. S7–11–10).

[4] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7–02–10) ("Concept Release").

[5] The Commission notes that high frequency trading has been estimated to account for more than 50 percent of the U.S. equities market volume. *See* Concept Release, 75 FR at 3606.

[6] It has been reported that sponsored access trading volume accounts for 50 percent of overall average daily trading volume in the U.S. equities market. *See, e.g.,* Carol E. Curtis, *Aite: More Oversight Inevitable for Sponsored Access,* Securities Industry News, December 14, 2009 (citing a report by Aite Group). In addition, sponsored access has been reported to account for 15 percent of Nasdaq volume. *See, e.g.,* Nina Mehta, *Sponsored Access Comes of Age,* Traders Magazine, February 11, 2009 (quoting Brian Hyndman, Senior Vice President for Transaction Services, Nasdaq OMX Group, Inc. "[direct sponsored access to customers is] a small percentage of our overall customer base, but it could be in excess of 15 percent of our overall volume.").

[7] *See, e.g.,* Nasdaq Rule 4611(d)(1)(A). The Commission notes that Rule 15c3–5 will effectively prohibit any access to trading on an exchange or ATS, whether sponsored or otherwise, where pre-trade controls are not applied.

[8] *See, e.g.,* NYSE IM–89–6 (January 25, 1989); and Securities Exchange Act Release No. 40354 (August 24, 1998), 63 FR 46264 (August 31, 1998) (NASD NTM- 98–66). The Commission notes that brokers-dealers typically access exchanges and ATSs through the use of unique MPIDs or other identifiers, which are assigned by the market.

[9] Highly automated trading systems deliver extremely high-speed, or "low latency" order responses and executions in some cases measured in times of less than 1 millisecond.

[10] For example, broker-dealers may receive market access from other broker-dealers to an exchange where they do not pay to maintain a membership.

[11] The Commission notes that exchanges offer various discounts on transaction fees that are based on the volume of transactions by a member firm. *See, e.g.,* Nasdaq Rule 7018 and NYSE Arca, Inc. ("NYSE Arca") Fee Schedule. Exchange members may use access arrangements as a means to aggregate order flow from multiple market participants under one MPID to achieve higher transaction volume and thereby qualify for more favorable pricing tiers.

[12] *See* Proposing Release, 75 FR at 4010—4011 and 4029—4031 for a more detailed description of previous SRO guidance and rules. The SROs have, over time, issued a variety of guidance and rules that, among other things, address proper risk controls by broker-dealers providing electronic access to the securities markets. In addition, this past January, the Commission approved a new Nasdaq rule that requires broker-dealers offering direct market access or sponsored access to Nasdaq to establish controls regarding the associated financial and regulatory risks, and to obtain a variety of contractual commitments from sponsored access customers. *See* Securities Exchange Act Release No. 61345 (January 13, 2010) (SR–NASDAQ–2008–104) ("Nasdaq Market Access Approval Order"), discussed in greater detail in the Appendix to the Proposing Release. Nasdaq has delayed the implementation of this rule until 360 days after its approval. *See* Securities Exchange Act Release Nos. 61770 (March 24, 2010), 75 FR 16224 (March 31, 2010) (SR–NASDAQ–2010–039); and 62491 (July 13, 2010), 75 FR 41918 (July 19, 2010) (SR–NASDAQ–2010–086).

[13] It has been reported that "unfiltered" access accounts for an estimated 38 percent of the average daily volume of the U.S. stock market. *See, e.g.,* Scott Patterson, *Big Slice of Market Is Going 'Naked',* Wall Street Journal, December 14, 2009 (citing a report by Aite Group).

The Commission also understands that some broker-dealers providing sponsored access may simply rely on assurances from their customers that appropriate risk controls are in place.

Appropriate controls to manage financial and regulatory risk for all forms of market access are essential to assure the integrity of the broker-dealer, the markets, and the financial system. The Commission believes that risk management controls and supervisory procedures that are not applied on a pre-trade basis or that, with certain limited exceptions, are not under the exclusive control of the broker-dealer, are inadequate to effectively address the risks of market access arrangements, and pose a particularly significant vulnerability in the U.S. national market system.

Market participants recognize the risks associated with naked sponsored access, with one commenter noting, for example, that the potential systemic risk is now "too large to ignore." [14] Today, order placement rates can exceed 1,000 orders per second with the use of high-speed, automated algorithms.[15] If, for example, an algorithm such as this malfunctioned and placed repetitive orders with an average size of 300 shares and an average price of $20, a two-minute delay in the detection of the problem could result in the entry of, for example, 120,000 orders valued at $720 million. In sponsored access arrangements, as well as other access arrangements, appropriate pre-trade risk controls could prevent this outcome from occurring by blocking unintended orders from being routed to an exchange or ATS.

As noted in the Proposing Release, while incidents involving algorithmic or other trading errors in connection with market access occur with some regularity,[16] the Commission also is concerned about preventing other, potentially severe, widespread incidents that could arise as a result of inadequate risk controls on market access. As trading in the U.S. securities markets has become more automated and high-speed trading more prevalent, the potential impact of a trading error or a rapid series of errors, caused by a computer or human error, or a malicious act, has become more severe. In addition, the inter-connectedness of the financial markets can exacerbate market movements, whether they are in response to actual market sentiment or trading errors.

For instance, on May 6, 2010, the financial markets experienced a brief but severe drop in prices, falling more than 5% in a matter of minutes, only to recover a short time later.[17] This incident provides a striking example of just how quickly and severely today's financial markets can move across a wide range of securities and futures products. If a price shock in one or more securities were to occur as a result of computer or human error, for example, it could spread rapidly across the financial markets, potentially with systemic implications. To address these risks, the Commission believes broker-dealers, as the entities through which access to markets is obtained, should implement effective controls reasonably designed to prevent errors or other inappropriate conduct from potentially causing a significant disruption to the markets.

The Commission believes that Rule 15c3–5 should reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market access arrangements, by requiring effective financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis. As described below, these financial and regulatory risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets. For example, a system-driven, pre-trade control designed to reject orders that are not reasonably related to the quoted price of the security would prevent erroneously entered orders from reaching the securities markets, which should lead to fewer broken trades and thereby enhance the integrity of trading on the securities markets.

Rule 15c3–5 is intended to complement and bolster existing rules and guidance issued by the exchanges and the Financial Industry Regulatory Authority ("FINRA") with respect to market access.[18] Moreover, by

[14] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from John Jacobs, Director of Operations, Lime Brokerage LLC, March 29, 2010 ("Lime Letter") at 1 ("[T]he potential for systemic risk posed by unregulated entities accessing the public markets directly and without any supervision is an issue too large to ignore, with estimates that naked access may account for somewhere between 10%–38% of all US equity market trading activity, and most likely a much greater participation percentage for orders placed."); *See also* letter to Elizabeth M. Murphy, Secretary, Commission, from Jose Marques, Managing Director, Global Head of Electronic Equity Trading, Deutsche Bank Securities Inc., March 31, 2010 ("Deutsche Bank Letter") at 2 ("[W]e are cognizant of the market and systemic risks that regulators perceive in unchecked market access, and agree that uniform guidance from the SEC as to the responsibilities of market access is needed.").

[15] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from John Jacobs, Director of Operations, Lime Brokerage LLC, February 17, 2009 (commenting on a proposed rule change filed by The NASDAQ Stock Market LLC to adopt a modified sponsored access rule (File No. SR–NASDAQ–2008–104)).

[16] Proposing Release, 75 FR at 4009. For example, it was reported that, on September 30, 2008, shares of Google fell as much as 93% in value due to an influx of erroneous orders onto an exchange from a single market participant. *See* Ben Rooney, *Google Price Corrected After Trading Snafu,* CNNMoney.com, September 30, 2008, *http://money.cnn.com/2008/09/30/news/companies/google_nasdaq/?postversion=2008093019* ("Google Trading Incident"). In addition, it was reported that, in September 2009, Southwest Securities announced a $6.3 million quarterly loss resulting from deficient market access controls with respect to one of its correspondent brokers that vastly exceeded its credit limits. John Hintze, *Risk Revealed in Post-Trade Monitoring,* Securities Industry News, September 8, 2009 ("SWS Trading Incident"). Another recent example occurred on January 4, 2010, when it was reported that shares of Rambus, Inc. suffered an intra-day price drop of approximately thirty-five percent due to erroneous trades causing stock and options exchanges to break trades. *See* Whitney Kisling and Ian King, *Rambus Trades Cancelled by Exchanges on Error Rule,* BusinessWeek, January 4, 2010, *http://www.businessweek.com/news/2010-01-04/rambus-trading-under-investigation-as-potential-error-update1-.html* (stating "[a] series of Rambus Inc. trades that were executed about $5 below today's average price were canceled under rules that govern stock transactions that are determined to be 'clearly erroneous.' ") ("Rambus Trading Incident"). More recently, single stock circuit breakers have been triggered for trading in shares of The Washington Post Company (WPO) and Progress Energy, Inc. (PGN) on June 16, 2010 and on September 27, 2010, respectively, due to severe price movements caused by order entry errors. In addition, certain exchanges provide a searchable history of erroneous trade cancellations on their website, which indicate that erroneous trades occur with some regularity. *See http://www.nasdaqtrader.com/Trader.aspx?id=MarketSystemStatusSearch.*

[17] *See* Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf. See also* Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues at *http://www.sec.gov/sec-cftc-prelimreport.pdf.* The Commission has taken steps to address the market vulnerabilities evidenced by the events of May 6th such as by working with the exchanges and FINRA to implement coordinated circuit breakers for individual stocks and to clarify the process for breaking erroneous trades. *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); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010); and 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010); *see also* Securities Exchange Act Release Nos. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010); and 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010). The Commission will continue to explore additional ways in which these vulnerabilities can be addressed.

[18] *See* Proposing Release, Appendix, 75 FR at 4029—4031 (noting current SRO guidance with regard to internal procedures and controls to manage the financial and regulatory risks associated

establishing a single set of broker-dealer obligations with respect to market access risk management controls across markets, Rule 15c3–5 will provide uniform standards that will be interpreted and enforced in a consistent manner and, as a result, reduce the potential for regulatory arbitrage.[19]

II. Rule 15c3–5

The Commission is adopting Rule 15c3–5—Risk Management Controls for Brokers or Dealers with Market Access—to reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market access arrangements, by requiring effective financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis. These financial and regulatory risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets. Rule 15c3–5 is intended to strengthen the controls with respect to market access and, because it will apply to trading on all exchanges and ATSs, reduce regulatory inconsistency and the potential for regulatory arbitrage. Rule 15c3–5 will require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, related to market access. The Rule will apply to trading in all securities on an exchange or ATS,[20] including equities, options, exchange-traded funds, debt securities, and security-based swaps.[21] Further, it will require that the broker or dealer with market access have direct and exclusive control of the risk management controls and supervisory procedures, while permitting the reasonable and appropriate allocation of specific risk management controls and supervisory procedures to a customer that is a registered broker-dealer so long as the broker-dealer providing market access has a reasonable basis for determining that such customer, based on its position in the transaction and relationship with the ultimate customer, can more effectively implement them. Finally, and importantly, Rule 15c3–5 will require those controls to be implemented on a pre-trade basis, which will necessarily eliminate the practice of broker-dealers providing "unfiltered" or "naked" access to any exchange or ATS. As a result, the Commission believes Rule 15c3–5 should substantially mitigate a particularly serious vulnerability of the U.S. securities markets.

After careful review and consideration of the comment letters, the Commission has determined to adopt Rule 15c3–5 substantially as proposed, but with certain narrow modifications made in response to concerns expressed by commenters as discussed below. Consistent with the Proposing Release, Rule 15c3–5 is organized as follows: (1) Relevant definitions, as set forth in Rule 15c3–5(a); (2) the general requirement to maintain risk management controls and supervisory procedures in connection with market access, as set forth in Rule 15c3–5(b); (3) the more specific requirements to maintain certain financial and regulatory risk management controls and supervisory procedures, as set forth in Rule 15c3–5(c); (4) the mandate that those controls and supervisory procedures, with certain limited exceptions, be under the direct and exclusive control of the broker-dealer with market access, as set forth in Rule 15c3–5(d); and (5) the requirement that the broker-dealer regularly review the effectiveness of the risk management controls and supervisory procedures, as set forth in Rule 15c3–5(e). This release first gives a general description of Rule 15c3–5 as adopted and then, in turn, discusses the specific provisions of Proposed Rule 15c3–5, the comments received on each provision, and any modifications to the provision from the Proposing Release.

A. Summary of Rule 15c3–5

Rule 15c3–5 will require a broker or dealer that has market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, related to such market access. Specifically, the Rule will require that broker-dealers with access to trading securities on an exchange or ATS, as a result of being a member or subscriber thereof, and broker-dealer operators of an ATS that provide access to their ATS to a non-broker-dealer, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access.[22] Broker-dealers that provide outbound routing services to an exchange or ATS in order for those trading centers to meet the requirements of Rule 611 of Regulation NMS will not be required to comply with the Rule with respect to such routing services, except with regard to paragraph (c)(1)(ii) of the Rule (regarding prevention of erroneous orders).

The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The regulatory risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access

with market access for members that provide market access to customers).

[19] *See, e.g.,* letters to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, February 19, 2009 ("The [Nasdaq] proposal to establish a well-defined set of rules governing sponsored access is a positive step towards addressing consistency in sponsored access requirements."); and Ted Myerson, President, FTEN, Inc., February 19, 2009 ("[I]t is imperative that Congress and regulators, together with the private sector, work together to encourage effective real-time, pre-trade, market-wide systemic risk solutions that help prevent [sponsored access] errors from occurring in the first place.").

[20] Under Section 763 of the Dodd-Frank Wall Street Reform and Customer Protection Act ("Dodd-Frank Act"), the Commission has new authority over security-based swap execution facilities. The Commission will consider possible application of risk management controls and supervisory procedures to trading on security-based swap execution facilities and other venues that facilitate the trading of such products.

[21] The Dodd-Frank Act, in Section 761, amended the definition of security to include security-based swaps. As such, the Commission notes that Rule 15c3–5 will apply to a broker or dealer with access to trading security-based swaps on a national securities exchange that makes security-based swaps available to trade.

[22] The Commission notes that the term "regulatory requirements" references existing regulatory requirements applicable to broker-dealers in connection with market access, and is not intended to substantively expand upon them. The specific content of the "regulatory requirements" would, of course, adjust over time as laws, rules, and regulations are modified.

technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. Each such broker-dealer will be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[23]

The financial and regulatory risk management controls and supervisory procedures required by Rule 15c3–5 must be under the direct and exclusive control of the broker-dealer with market access, with certain limited exceptions permitting allocation to a customer that is a registered broker-dealer of specified functions that, based on its position in the transaction and relationship with the ultimate customer, it can more effectively implement. In addition, a broker-dealer with market access will be required to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues. Among other things, the broker-dealer will be required to review, no less frequently than annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures. Such review will be required to be conducted in accordance with written procedures and will be required to be documented. The broker-dealer will be required to preserve a copy of its written procedures, and documentation of each review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act,[24] and Rule 17a–4(b) under the Exchange Act, respectively.[25]

In addition, the Chief Executive Officer (or equivalent officer) of the broker-dealer will be required, on an annual basis, to certify that the risk management controls and supervisory procedures comply with Rule 15c3–5, and that the regular review described above has been conducted. Such certifications will be required to be preserved by the broker-dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act.[26]

B. Definitions

As proposed, Rule 15c3–5 sets forth two defined terms: "market access" and "regulatory requirements." The term "market access" is central to Proposed Rule 15c3–5, as it determines which broker-dealers are subject to Rule and the scope of the required financial and regulatory risk management controls and supervisory procedures. In the Proposing Release, the Commission proposed to define the term "market access" as access to trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively.[27] In the Proposing Release, the Commission explained that "market access" is intentionally defined broadly so as to include not only direct market access or sponsored access services offered to customers of broker-dealers, but also access to trading for the proprietary account of the broker-dealer and for more traditional agency activities. In addition, the proposed definition would encompass trading in all securities on an exchange or ATS, including equities, options, exchange-traded funds, debt securities, and security-based swaps.

1. Non-Broker-Dealer ATS Subscribers

By its terms, the proposed rule would not have applied to non-broker-dealer market participants, including non-broker-dealer subscribers to ATSs.[28] In addition, as proposed, the definition of "market access" was limited by the phrase "as a result of being a member or subscriber of the exchange or ATS, respectively." Accordingly, a broker-dealer that operates an ATS and provides non-broker-dealer market participants access to its ATS would not have been included within the proposed definition of market access, because such access would not result from that broker-dealer being a subscriber to the ATS, but rather from its being the ATS operator.

With regard to exchanges, the Exchange Act requires members to be registered broker-dealers.[29] Accordingly, the proposed rule was intended to ensure that all orders submitted to an exchange would flow through broker-dealer systems subject to Rule 15c3–5 prior to such orders entering an exchange. While the majority of ATS subscribers are broker-dealers, the current ATS regulatory regime does not require a subscriber to be a broker-dealer.[30] As proposed, since a non-broker-dealer subscriber to an ATS would not have been subject to the proposed rule, orders it submits directly to an ATS to which it subscribes would not have flowed through a broker-dealer system subject to Proposed Rule 15c3–5 before entering the ATS.

In the Proposing Release, the Commission requested comment on whether the broker-dealer operator of an ATS should be required to implement risk management controls and supervisory procedures with regard to a non-broker-dealer subscriber's access to its ATS. Nine commenters specifically addressed non-broker-dealer access to trading in securities on ATSs in response to this request.[31] Generally, these commenters believed that all orders entered on an exchange or ATS should be subject to equivalent regulatory treatment, and urged the Commission to address this issue. For example, FINRA noted that the same regulatory and financial risks associated with broker-dealer access arrangements are present when a non-broker-dealer

[23] *See* 17 CFR 240.17a–4(e)(7). Pursuant to Rule 17a–4(e)(7), every broker or dealer subject to Rule 17a–3 is required to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker or dealer until three years after the termination of the use of the manual.

[24] *Id.*

[25] *See* 17 CFR 240.17a–4(b). Pursuant to Rule 17a–4(b), every broker or dealer subject to Rule 17a–3 is required to preserve for a period of not less than three years, the first two years in an easily accessible place, certain records of the broker or dealer.

[26] *Id.*

[27] Proposed Rule 15c3–5(a)(1).

[28] *See* Proposing Release, 75 FR at 4012 n. 35 (stating that "Proposed Rule 15c3–5 would not apply to non-broker-dealers, including non-broker-dealers that are subscribers of an ATS.").

[29] *See* 15 U.S.C. 78f(c)(1) ("A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.").

[30] *See* 17 CFR 242.300(b).

[31] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, March 25, 2010 ("FINRA Letter"); Christopher Lee, Global Head of Market Access, and Paul Willis, Global Compliance Officer, Fortis Bank Global Clearing N.V. London Branch, March 26, 2010 ("Fortis Letter"); J. Ronald Morgan, Managing Director, Goldman, Sachs & Co., and Timothy T. Furey, Managing Director, Goldman Sachs Execution & Clearing, L.P., March 20, 2010 ("Goldman Letter"); Timothy J. Mahoney, Chief Executive Officer, Marybeth Shay, Senior Managing Director Sales and Marketing, and Vivian A. Maese, General Counsel and Corporate Secretary, BIDS Trading, March 29, 2010 ("BIDS Letter"); P. Mats Goebels, Managing Director and General Counsel, Investment Technology Group, Inc., March 29, 2010 ("ITG Letter"); Peter Kovac, Chief Operating Officer and Financial and Operations Principal, EWT LLC, March 29, 2010 ("EWT Letter"); John A. McCarthy, General Counsel, GETCO, April 1, 2010 ("GETCO Letter"); Jeffery S. Davis, Vice President and Deputy General Counsel, The Nasdaq OMX Group ("Nasdaq Letter"); Ann Vlcek, Managing Director and Associate General Counsel, SIFMA, April 16, 2010 ("SIFMA Letter").

subscriber enters orders and accesses an ATS.[32]

Six commenters recommended that the broker-dealer operator of the ATS should be required to implement the required risk management controls and supervisory procedures with regard to order flow from non-broker-dealer subscribers.[33] In general, these commenters believed that the broker-dealer operator of an ATS is best positioned to implement the risk management controls and supervisory procedures required under the proposed rule for order flow entered into its ATS by non-broker-dealer subscribers. For example, one commenter noted that, when receiving orders from non-broker-dealer subscribers, the ATS's sponsoring broker-dealer is the only broker-dealer in the chain of order flow from the subscriber to the ATS.[34] Similarly, FINRA believed that, because ATSs themselves have regulatory obligations as registered broker-dealers and FINRA members, it is appropriate to impose risk management obligations on ATSs to the extent that non-registered entities are permitted to access its ATS.[35] Two other commenters agreed that an ATS should be required to implement risk management controls and supervisory procedures with regard to order flow from non-broker-dealer subscribers, but they believed this obligation stems from its status as a market center rather than as a broker-dealer.[36]

Several commenters put forth additional ideas as to how to address non-broker-dealer subscriber access to an ATS. One commenter suggested that the broker-dealer that clears the trades that occur on an ATS for a non-broker-dealer subscriber should be required to implement the risk controls with regard to such orders.[37] Another commenter proposed that the Commission amend the ATS regulatory structure to require ATS subscribers to be broker-dealers.[38] Yet another commenter suggested that the Commission directly subject the non-broker-dealer subscribers to the proposed rule.[39] The Commission received no comments suggesting that non-broker-dealer subscriber access to an ATS should be outside the scope of the proposed rule.

The Commission agrees that similar regulatory and financial risks are present when a non-broker-dealer subscriber directly accesses an ATS as when a broker-dealer accesses an exchange or ATS. Accordingly, the Commission believes that such access should be subject to the requirements of the proposed rule to ensure that all orders that enter an ATS are subject to effective risk management controls and supervisory procedures reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements. Specifically, the Commission believes that the broker-dealer operator of an ATS should be required to implement the financial and regulatory risk management controls and supervisory procedures required by the Rule with regard to access by non-broker-dealer subscribers to its ATS.

As noted above, because Rule 15c3–5 will not apply to non-broker-dealer subscribers, several commenters suggested alternative ways to subject non-broker-dealer ATS subscribers to the proposed rule. The Commission believes, however, that the broker-dealer operator of an ATS is the best positioned broker-dealer to implement the risk management controls, particularly the pre-trade controls, required under the proposed rule. In addition, the Commission believes the broker-dealer operator of an ATS can effectively achieve the purposes of the Rule. Requiring the broker-dealer operator of an ATS to implement the risk management controls and supervisory procedures required by the proposed rule with respect to non-broker-dealer subscribers should ensure that all order flow entered on an ATS is subject to the Rule's financial and regulatory risk management controls and supervisory procedures.[40]

Accordingly, the term "market access" in Rule 15c3–5(a)(1), as adopted, is defined to include "access to trading in securities on an alternative trading system provided by a broker-dealer operator of an alternative trading system to a non-broker-dealer." A broker-dealer operator of an ATS, therefore, would have "market access" if it provides non-broker-dealer subscribers access to its ATS. Such a broker-dealer ATS operator would be subject to Rule 15c3–5 and would be required, among other things, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The Commission believes any broker-dealer with direct access to trading on an exchange or ATS, or that provides other market participants access to trading on an exchange or ATS, should establish effective risk management controls reasonably designed to prevent breaches of credit or capital limits, erroneous trades, violations of SEC or exchange trading rules, and the like. These risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets.

2. "Regulatory Requirements"

Under Proposed Rule 15c3–5(a)(2), the term "regulatory requirements" was defined to include all federal securities laws, rules and regulations, and rules of SROs, that are applicable in connection with market access. In the Proposing Release, the Commission stated that it intends this definition to encompass all of a broker-dealer's regulatory requirements that arise in connection with its market access.[41] "Regulatory requirements" is a key term that controls the scope of the regulatory risk management controls and supervisory procedures required by Proposed Rule 15c3–5(c)(2). While several commenters addressed the scope of the term "regulatory requirements" in the context of the proposal to require risk management controls and supervisory systems,[42] a few commenters expressed concern regarding the specific definition of "regulatory requirements." Two commenters requested that the Commission clarify that the definition does not expand or alter the current obligations of broker-dealers with market access or that provide other market participants with access to trading on an exchange or ATS.[43] The Commission emphasizes that the term "regulatory requirements" references existing regulatory requirements applicable to broker-dealers in connection with market access, and is not intended to substantively expand upon them (a concern noted by some commenters). As discussed below in Section II.E, these regulatory requirements would include, for example, pre-trade requirements such as exchange trading rules relating to

[32] *See* FINRA Letter at 3–4.

[33] *See* FINRA Letter at 3–4; Fortis Letter at 5; Goldman Letter at 1 n. 3; BIDS Letter at 4; ITG Letter at 9; SIFMA Letter at 7.

[34] *See* ITG Letter at 9.

[35] *See* FINRA Letter at 3–4.

[36] *See* Fortis Letter at 5; BIDS Letter at 4.

[37] *See* EWT Letter at 2.

[38] *See* GETCO Letter at 7.

[39] *See* Nasdaq Letter at 2.

[40] As discussed in greater detail, *infra,* a broker-dealer subscriber of an ATS will be able to utilize the risk management tools and software provided by the ATS to fulfill the requirements of the Rule.

[41] *See* Proposing Release, 75 FR at 4012.

[42] These comments are addressed in Section II.E. below.

[43] SIFMA Letter at 6; letter to Elizabeth M. Murphy, Secretary, Commission, from Joseph M. Velli, Chairman and Chief Executive Officer, ConvergEx Group, April 9, 2010 ("ConvergEx Letter") at 6.

special order types, trading halts, odd-lot orders, and SEC rules under Regulation SHO and Regulation NMS, as well as post-trade obligations to monitor for manipulation and other illegal activity. The specific content of the "regulatory requirements" would, of course, adjust over time as laws, rules and regulations are modified.

C. Requirement to Maintain Risk Management Controls and Supervisory Procedures

Proposed Rule 15c3–5(b) sets forth the general requirement that any broker-dealer with access to trading on an exchange or ATS must establish risk management controls and supervisory procedures reasonably designed to manage the associated risks. Specifically, Proposed Rule 15c3–5(b) provides that a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, of this business activity. Proposed Rule 15c3–5(b) requires the controls and procedures to be documented in writing, and requires the broker-dealer to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[44]

1. "Reasonably Designed" Controls and Procedures

Proposed Rule 15c3–5(b) requires that the risk management controls and supervisory procedures of a broker-dealer subject to the rule be "reasonably designed" to manage the risks associated with market access. Commenters generally supported the proposed "reasonably designed" standard in the rule.[45] In the Proposing Release, the Commission noted that the proposed rule allows flexibility for the details of the controls and procedures to vary from broker-dealer to broker-dealer, depending on the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the proposed rule.[46] Accordingly, Rule 15c3–5 does not employ a "one-size-fits-all" standard for determining compliance with the rule.[47] For example, a broker-dealer that only handles order flow from retail clients may very well develop different risk management controls and supervisory procedures than a broker-dealer that mostly services order flow from sophisticated high frequency traders.[48]

2. Application to Traditional Agency Brokerage and Proprietary Trading

As noted above, the Commission expressed the view in the Proposing Release that the financial and regulatory risk management controls and supervisory procedures described in the proposed rule should apply broadly to all forms of market access by broker-dealers that are exchange members or ATS subscribers, including sponsored access, direct market access, and more traditional agency brokerage arrangements with customers, as well as proprietary trading.[49] Accordingly, the proposed term "market access" includes all such activities.

Certain commenters suggested that the scope of the proposed rule is too far-reaching in that it encompasses broker-dealer activities that do not raise risks as significant as those that occur in "unfiltered" sponsored access arrangements.[50] One commenter believed that the proposed rule would lead to duplicative, unnecessary, and costly regulation.[51] Another commenter, while acknowledging the risks posed by unfiltered sponsored access arrangements, questioned the need for the rule to cover other market access arrangements.[52] In contrast, one commenter stated that Rule 15c3–5 should apply equally to customer and proprietary trading activity, and "should not just be applicable to those members offering third party access."[53] Another commenter similarly noted that uniform principles with respect to market access are warranted, and that any final rule on market access should not advantage a broker-dealer's proprietary business over its customer business.[54] Yet another commenter noted that subjecting proprietary trading of broker-dealers to Rule 15c3–5 would create "common expectations for all firms to police themselves in order to limit potential market impacting events."[55]

The Commission continues to believe that the risks associated with market access—whether they involve the potential breach of a credit or capital limit, the submission of erroneous orders as a result of computer malfunction or human error, the failure to comply with SEC or exchange trading rules, the failure to detect illegal conduct, or otherwise—are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or sponsored access arrangements. The Commission believes that to effectively address these risks, Rule 15c3–5 must apply broadly to all access to trading on an exchange or ATS.

In addition, the Commission, consistent with our understanding of current broker-dealer best practices, continues to believe that, in many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, that Rule 15c3–5 should be substantially satisfied by existing risk management controls and supervisory procedures already

[44] *See* 17 CFR 240.17a–4(e)(7).

[45] *See, e.g.,* EWT Letter at 4; SIFMA Letter at 2; letters to Elizabeth M. Murphy, Secretary, Commission, from Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, American Bar Association, April 5, 2010 ("ABA Letter") at 5; Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated ("CBOE Letter") at 3.

[46] In agreeing with the approach of the proposed rule, one commenter noted that "[a]n effective risk management system should be tailored to the business of the broker-dealer, taking into account a comprehensive view of the firm's activities, including the individual circumstances of various customers and clients, and a quantitative analysis of the trading goals and strategies employed across all asset classes for each entity placing orders." *See* EWT Letter at 4.

[47] ABA Letter at 5 (requesting that the Commission clearly state that the proposed "reasonably designed" standard is not meant to be a one-size-fits-all test that would unreasonably burden smaller broker-dealers). *See also* letter to Elizabeth M. Murphy, Secretary, Commission, from Edward Wedbush, President, and Jeff Bell, Executive Vice President, Wedbush Securities Inc., March 31, 2010 ("Wedbush Letter") at 1 (stating that "the requirements of the Proposed Rule should not be applied on a one size fits all basis.").

[48] The Commission agrees with a commenter that noted that "[r]isk controls must be tailored to the particular nature of the market access, the arrangements between the market participants and the market venue, and the client's trading strategy." Goldman Letter at 2.

[49] Proposed Rule 15c3–5 would not apply to non-broker-dealers, including non-broker-dealers that are subscribers of an ATS.

[50] *See, e.g.,* ABA Letter at 2–3; CBOE Letter at 1; letter to Elizabeth M. Murphy, Secretary, Commission, from Kimberly Unger, Executive Director, The Securities Traders Association of New York, Inc., March 29, 2010 ("STANY Letter") at 2.

[51] STANY Letter at 2.

[52] CBOE Letter at 2.

[53] Fortis Letter at 4.

[54] Letter to Elizabeth M. Murphy, Secretary, Commission, from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association ("MFA"), March 29, 2010 ("MFA Letter") at 2. MFA recognized that different types of filters and control settings for proprietary orders and customer orders may be warranted due to the different types of risks presented by such orders. *Id. See also* Wedbush Letter at 4 ("Certain pre-trade risk filters should be applied to all orders whether sponsored or not, thereby eliminating the performance or speed differential, and effectively encouraging firms to utilize these controls.").

[55] GETCO Letter at 2.

implemented by broker-dealers.[56] For these broker-dealers, Rule 15c3–5 should have a minimal impact on current business practices and, therefore, should not impose significant additional costs on those broker-dealers that currently employ a prudent approach to risk management.[57] Rule 15c3–5 will assure that broker-dealer controls and procedures are appropriately strengthened, as necessary, so that consistent standards are applied for all types of market access. By requiring all forms of market access by broker-dealers to meet certain baseline standards for financial and regulatory risk management controls, Rule 15c3–5 should reduce risks to broker-dealers, the markets, and the financial system, and thereby enhance market integrity and investor protection.

3. Risk Management Controls Provided by Exchanges and ATSs

Several commenters addressed the role of market centers—exchanges and ATSs—in connection with the establishment of risk management controls.[58] Some commenters suggested that market centers, rather than broker-dealers with market access, should be responsible for implementing certain pre-trade risk management controls. These commenters generally argued that the market center is best positioned to implement pre-trade risk management controls such as those designed to prevent erroneous orders and assure compliance with SRO rules relating to trading halts and special order types.[59] Some commenters argued that applying pre-trade risk controls at the market center level would provide for uniform treatment of all orders entered on that market center,[60] and would more equitably allocate risk management obligations among those that benefit from trading.[61] In this regard, commenters noted that certain exchanges currently provide users with an array of pre-trade risk controls, and urged the Commission to allow broker-dealers to rely on these exchange controls to comply with the Rule.[62] The Commission believes that market center-provided pre-trade risk controls can be useful risk management tools. The Commission continues to believe, however, that broker-dealers with market access should be responsible in the first instance for establishing and maintaining appropriate risk management controls under the Rule. The Commission notes, as discussed in Section F. below, that broker-dealers may be able to use market center-provided pre-trade risk controls as part of an overall plan to comply with the Rule. In addition, the Commission notes that market centers may independently implement pre-trade risk management controls to supplement those applied by broker-dealers.

4. Routing Brokers

In the Proposing Release, the Commission requested comment on whether any particular market access arrangement warranted different treatment under the proposed rule. In response, eight commenters expressed concern with the application of the proposed rule to broker-dealers that provide outbound order routing services to exchanges.[63] In addition, two of these commenters noted the same concerns with respect to broker-dealers that provide outbound order routing services to ATSs.[64] As proposed, Rule 15c3–5 would have applied to routing brokers because they have "market access," as defined in Rule 15c3–5(a)(1).

Exchanges and ATSs use outbound order routing services provided by broker-dealers to, among other things, comply with the trade-through provisions of Rule 611 of Regulation NMS[65] for NMS stocks, and the trade-through provisions of Options Linkage Plan[66] for listed options, by routing orders to better-priced quotes at away markets. Some exchanges and ATSs use affiliated broker-dealers to perform this function, and others contract with an unaffiliated broker-dealer to do so.[67] In general, the outbound order routing service provided to exchanges by broker-dealers is regulated as a facility of the exchange, and therefore is subject to direct Commission oversight.[68]

Commenters noted that, under the proposal, orders submitted to an exchange would first have to flow through broker-dealer systems that are subject to the financial and regulatory risk controls required by proposed Rule 15c3–5, and suggested that requiring routing brokers to perform the same risk checks immediately thereafter would be duplicative.[69] These commenters suggested that subjecting routing brokers to proposed Rule 15c3–5 would impose unnecessary costs and inefficiencies without any corresponding benefits. In addition, some commenters argued that routing brokers would not necessarily have the requisite knowledge to effectively implement the required pre-trade risk checks.[70]

[56] *See* Proposing Release, Appendix, 75 FR at 4029–4031 (noting current SRO guidance with regard to internal procedures and controls to manage the financial and regulatory risks associated with market access for members that provide market access to customers).

[57] *Id.*

[58] *See* Wedbush Letter at 4; Fortis Letter at 2; SIFMA Letter at 6; CBOE Letter at 4; Goldman Letter at 7; GETCO Letter at 6; ITG Letter at 3–4; Lime Letter at 6; Deutsche Bank Letter at 5–6; letters to Elizabeth M. Murphy, Secretary, Commission, from Richard D. Berliand, Managing Director and Head of Prime Services and Market Structure Group, and John J. Hogan, Managing Director and Chief Risk Officer, Investment Bank, J.P. Morgan Securities Inc., April 26, 2010 ("JP Morgan Letter") at 2–3; Jesse Lawrence, Director and Managing Counsel, Pershing LLC, March 24, 2010 ("Pershing Letter") at 3–4; Nicole Harner Williams, Vice President and Associate General Counsel, Penson Worldwide, Inc., March 29, 2010 ("Penson Letter") at 3; Gary DeWaal, Senior Managing Director and Group General Counsel, Newedge USA, LLC, March 29, 2010 ("Newedge Letter") at 2, 4; John M. Damgard, President, Futures Industry Association, May 6, 2010, ("FIA Letter") at 2.

[59] *See, e.g.,* Pershing Letter at 3; Penson Letter at 3; Deutsche Bank Letter at 5; Goldman Letter at 7; ITG Letter at 3; Lime Letter at 6; JP Morgan Letter at 2.

[60] *See, e.g.,* Deutsche Bank Letter at 2; Lime Letter at 6; Wedbush Letter at 4; Pershing Letter at 3.

[61] *See, e.g.,* Newedge Letter at 2.

[62] *See, e.g.,* Wedbush Letter at 4. *See also* NYSE Letter at 3; BATS Letter at 2; BIDS Letter at 2.

[63] *See* Nasdaq Letter at 4; CBOE Letter at 3; EWT Letter at 4; ConvergEx Letter at 5; GETCO Letter at 5; letters to Elizabeth M. Murphy, Secretary, Commission, from Eric W. Hess, General Counsel, Direct Edge Holdings, LLC, March 26, 2010 ("Direct Edge Letter") at 1–3; Eric J. Swanson, Senior Vice President and General Counsel, BATS Exchange, Inc., March 21, 2010 ("BATS Letter") at 3–4; Janet M. Kissane, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, March 29, 2010 ("NYSE Letter") at 4–5.

[64] *See, e.g.,* GETCO Letter at 5; CBOE Letter at 3.

[65] *See* 17 CFR 242.611. Pursuant to Rule 611 of Regulation NMS, exchanges and ATSs are required to, among other things, establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on such exchange or ATS of protected quotations in NMS stocks. Exchanges and ATSs generally comply with this requirement, in part, by employing an affiliated or unaffiliated broker-dealer to route orders received by the exchange or ATS to other trading centers displaying protected quotations.

[66] The Options Linkage Plan is a Commission-approved national market system plan. Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) ("Options Linkage Plan").

[67] *See, e.g.,* Direct Edge Letter at 2; Nasdaq Letter at 4; NYSE Letter at 4.

[68] *See, e.g.,* The NASDAQ Stock Exchange LLC Rule 4758(b); BATS Exchange, Inc. Rule 2.11(a); and New York Stock Exchange, Inc. Rule 13. Several commenters noted that exchange routing brokers operate as facilities of exchanges. *See* Nasdaq Letter at 4; NYSE Letter at 4; Direct Edge Letter at 1. Nasdaq stated that "exchange-operated broker-dealers are already heavily regulated as exchange facilities, including rule strictly limiting them to a single client, the exchange itself."

[69] *See* Nasdaq Letter at 4; NYSE Letter at 5; BATS Letter at 4; Direct Edge Letter at 2–3; CBOE Letter at 3; GETCO Letter at 5.

[70] *See* Direct Edge Letter at 2; ConvergEx Letter at 5; GETCO Letter at 5; BATS Letter at 4; EWT Letter at 4.

The Commission is adopting Rule 15c3–5 to include an exception for broker-dealers that provide outbound routing services to an exchange or ATS for the sole purpose of accessing other trading centers with protected quotations on behalf the exchange or ATS in order to comply with Rule 611 of Regulation NMS, or a national market system plan for listed options. Under Rule 15c3–5, orders sent to an exchange or ATS for execution on that exchange or ATS are required to be subject to broker-dealer risk management controls immediately before submission to the exchange or ATS.[71] When providing outbound routing services to an exchange or ATS for the sole purpose of accessing other trading centers with protected quotations on behalf the exchange or ATS in order to comply with Rule 611 of Regulation NMS, or a national market system plan for listed options, routing brokers necessarily would only handle orders that have just passed through broker-dealer risk management controls subject to Proposed Rule 15c3–5. Accordingly, the Commission believes that excepting routing brokers employed by exchanges and ATSs to comply with Rule 611of Regulation NMS, or a national market system plan for listed options, from the requirements of Rule 15c3–5 should serve to encourage efficient routing services for the purpose of Regulation NMS compliance without increasing the risks associated with market access. The Commission notes, however, that routing brokers will not be exempt from the requirement in Rule 15c3–5(c)(1)(ii) to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. The Commission believes that requiring routing brokers to have controls reasonably designed to prevent the entry of erroneous or duplicative orders should help ensure that order handling by an exchange or ATS routing broker would not increase risk.

The Commission notes that the exception applies only to the extent a routing broker is providing services to an exchange or ATS for the purpose of fulfilling the compliance obligations of the exchange or ATS under Rule 611 of Regulation NMS, or a national market system plan for listed options. Routing services of an exchange or ATS routing broker that are not limited to compliance with Rule 611 of Regulation NMS may include a more complex order routing process involving new decision-making by the routing broker that warrant imposition of the full range of market access risk controls. Accordingly, the Commission believes that in these circumstances the exchange or ATS routing broker should be fully subject to Rule 15c3–5. The exception would not apply, for example, to a broker-dealer when it provides other routing services for the exchange or ATS, such as directed routing for exchange or ATS customers. In addition, the Commission emphasizes that this exception only applies to the requirements of Rule 15c3–5. Accordingly, this exception would not relieve a routing broker that is a member of an exchange of its obligation to comply with the rules of that exchange.

D. Financial Risk Management Controls and Supervisory Procedures

Proposed Rule 15c3–5(c) would have required a broker-dealer's risk management controls and supervisory procedures to include certain elements. Proposed Rule 15c3–5(c)(1) was intended to address financial risks, and would have required that the risk management controls and supervisory procedures be reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access. Among other things, the controls and procedures must be reasonably designed to: (1) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer, and where appropriate more finely-tuned by sector, security, or otherwise, by rejecting orders if such orders exceed the applicable credit or capital thresholds; and (2) prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

1. Individual Trading Center Credit Limits

Commenters generally agreed that systematic, pre-set credit or capital thresholds applied on a pre-trade basis are reasonable and appropriate financial risk management controls that should be in place for market access arrangements.[72] Some commenters, however, suggested that the Commission clarify how a broker-dealer could reasonably set credit and capital thresholds under the proposed rule.[73] In particular, one commenter thought broker-dealers should have the flexibility to set credit limits for customers on a market-by-market basis.[74] The Commission believes that a broker-dealer that sets a reasonable aggregate credit limit for each customer could satisfy Rule 15c3–5(c)(1)(i) if the broker-dealer imposes that credit limit by setting sub-limits applied at each exchange or ATS to which the broker-dealer provides access that, when added together, equal the aggregate credit limit. This approach, however, would necessarily require that, when assessing the customer's credit exposure at one market center, the broker-dealer assume that the maximum credit limit has been reached by the customer at all other exchanges and ATSs to which it provides access. For example, if a reasonable aggregate credit limit for a customer is $1,000,000 and the broker-dealer provides it access to five exchanges or ATSs, the broker-dealer may set individual market center credit limits of $200,000 to be applied at the market center level, but that limit could not be increased to reflect any unused portion of the credit limits at other market centers.

2. More Finely-Tuned Credit Limits

A few commenters argued that the requirement to set finely-tuned credit or capital thresholds, where appropriate, is unclear, and the Commission should provide more detail or eliminate the requirement.[75] One commenter believed the requirement was vague, and expressed concern that a broker-dealer could be found to have violated the proposed rule if it did not finely-tune its

[71] The Commission notes that, as adopted, Rule 15c3–5 requires a broker-dealer operator of an ATS to implement the financial and regulatory risk management controls required by the rule with regard to non-broker-dealer subscriber's access to its ATS. As discussed above, with this change, Rule 15c3–5 requires all orders that enter an ATS (*i.e.* orders entered by broker-dealer subscribers and non-broker-dealer subscribers) to flow through broker-dealer risk management controls subject to the proposed rule.

[72] *See, e.g.,* Wedbush Letter at 4 ("Pre-trade filters benefit the entire industry by helping to prevent computerized trading malfunctions * * *."); Lime Letter at 5 ("Real-time pre-trade, order-placement controls are certainly a critical component to mitigate many of the risks associated with market access."), SIFMA Letter at 2 ("SIFMA supports the general principle underlying the Proposal that pre-trade and post-trade controls and procedures are appropriate in sponsored access arrangements."), JP Morgan Letter at 2 ("We agree with the Commission that pre-trade controls need to be applied to all orders sent under a broker-dealer's MPID to an exchange or ATS.").

[73] *See, e.g.,* BIDS Letter at 3; SIFMA Letter at 8; ConvergEx Letter at 5.

[74] BIDS Letter at 3 (suggesting that "it would be a reasonable procedure for a broker-dealer to set thresholds with reference to the aggregate trading potential of such customer that is known to the firm on a per market basis").

[75] *See, e.g.,* ITG Letter at 8; Deutsche Bank Letter at 3.

credit or capital thresholds.[76] Another commenter thought the requirement is unclear, and questioned the need for it in light of an aggregate credit or capital threshold.[77] In contrast, one commenter agreed with the proposed rule that "an aggregate exposure threshold should be required for each account and, where appropriate, for specific industry sectors and/or securities."[78] Rule 15c3–5(c)(1)(i), the provision addressing more finely-tuned credit or capital thresholds, where appropriate, is intended to provide a broker-dealer flexibility in setting its credit and capital threshold consistent with the broker-dealer's business model and the goals of the Rule. A broker-dealer should assess its business and its customers to determine if it is appropriate to establish more tailored credit or capital limits by sector, security, or otherwise. This underscores the reasonable policies and procedures approach of the Rule and the Commission's recognition that a "one-size-fits-all" model for risk management controls and supervisory procedures in connection with market access is not appropriate.[79]

3. Reasonable Models for Credit or Capital Exposure of Outstanding Orders

Several commenters suggested more flexibility with respect to the proposed pre-order entry financial risk management controls in paragraph (c)(1)(i) of the Rule. One commenter suggested that the controls be applied on a rolling intra-day or post-close basis, with compliance being calculated based on executed orders rather than orders routed but not yet executed.[80] In other words, a broker-dealer's controls would block the routing of additional orders and cancel any open orders only after the execution of orders exceeding the applicable credit or capital limit had occurred. Other commenters suggested additional variations on the proposed approach to compliance with credit and capital thresholds so as to reduce the potential impact on liquidity.[81] For example, commenters suggested that an algorithmic approach to determining the credit and capital threshold would be preferable.[82] One commenter suggested that the Commission should require "real-time trade flow controls which incorporate an algorithmic approach to resting orders, executions and cancellation rates in order to accomplish desired improvements in systemic risk management without adversely impacting liquidity in the marketplace."[83]

In the Proposing Release, the Commission stated that "because financial exposure through rapid order entry can be incurred very quickly in today's fast electronic markets, controls should measure compliance with appropriate credit or capital thresholds on the basis of orders entered rather than executions obtained."[84] The Commission continues to believe that broker-dealers should monitor compliance with applicable credit or capital thresholds based on orders entered, including the potential financial exposure resulting from open orders not yet executed. The Commission recognizes, however, that some active trading strategies predictably result in executions for only a small percentage of orders entered, and that requiring broker-dealers to assume that every order entered will be executed will, in some cases, significantly overestimate actual credit or capital exposures. Accordingly, the Commission believes that, while the reasonably designed risk management controls contemplated by Rule 15c3–5 should measure compliance based on orders entered, the credit or capital exposure assigned to those orders may be discounted, where appropriate, to account for the likelihood of actual execution as demonstrated by reasonable risk management models. Any broker-dealer relying on risk management models to discount the exposure of outstanding orders should monitor the accuracy of its models on an ongoing basis and make appropriate adjustments to its method of calculating credit or capital exposures as warranted. Broker-dealers providing market access also may wish to establish "early warning" mechanisms to alert them when the applicable credit or capital threshold is being approached, so that additional steps may be taken to assure the threshold is not breached.

4. Duplicative Orders

A few commenters expressed concern regarding the requirement in Proposed Rule 15c3–5(c)(1)(ii) that a broker-dealer have controls and procedures reasonably designed to prevent the entry of orders that indicate duplicative orders. One commenter noted that this aspect of the proposal could create operational difficulties in determining how to set the risk management parameters, and requested that the Commission either eliminate this requirement from the rule or clarify that a broker-dealer could apply reasonable standards to detect duplicative orders based on the activity of its customers.[85] Another commenter noted the difficulties in setting parameters to detect duplicative orders and suggested the Commission allow for flexibility in setting parameters so as not to disadvantage clients by rejecting orders that are not in fact duplicative.[86] The Commission emphasizes that the controls and procedures must be "reasonably designed" to prevent the entry of erroneous orders, including duplicative orders, which allows broker-dealers some flexibility in crafting them, so long as they are reasonably designed to achieve the stated goal. Among other things, the Commission believes broker-dealers should take into account the type of customer as well as the customer's trading patterns and order entry history in determining how to set such parameters.[87]

5. Rule 15c3–5(c)(1)

The Commission is adopting Rule 15c3–5(c)(1) as proposed. The Commission believes that, in today's fast electronic markets, effective controls with respect to financial risk incurred on exchanges and ATSs must be automated and applied on a pre-trade basis. These pre-trade controls should protect broker-dealers providing market access, as well as their customers and other market participants, by blocking orders that do not comply with applicable risk management controls from being routed to a securities market. As noted above, there is flexibility for the specific parameters of the controls and procedures to vary from broker-dealer to broker-dealer, depending on

[76] Deutsche Bank Letter at 3.

[77] ITG Letter at 8.

[78] Goldman Letter at 6.

[79] *See* ABA Letter at 5 (requesting that the Commission clearly state that the proposed "reasonably designed" standard is not meant to be a one-size-fits-all test that would unreasonably burden smaller broker-dealers).

[80] Goldman Letter at 6.

[81] Deutsche Bank Letter at 3 (suggesting that the Commission replace the pre-trade credit threshold with a threshold based on the total dollar value of open orders placed by a customer); STANY Letter at 5–6; letter to Elizabeth M. Murphy, Secretary, Commission, from Ted Myerson, Chief Executive Officer, Doug Kittelsen, Chief Technology Officer, and M. Gary LaFever, General Counsel, FTEN, Inc., March 29, 2010 ("FTEN Letter") at 4.

[82] STANY Letter at 5–6; FTEN Letter at 4.

[83] FTEN Letter at 4. *See also* STANY Letter at 5 (stating that "an analysis of the likelihood of an infraction occurring within the overall setting of the orders, executions and cancellation rates * * * would result in desired improvements in systemic risk controls without adversely impacting liquidity in the marketplace.").

[84] Proposing Release, 75 FR at 4013.

[85] NYSE Letter at 2.

[86] SIFMA Letter at 9.

[87] For example, a reasonably designed risk control to prevent the entry of duplicative orders for a high frequency trader may very well be different—in particular, more tolerant—than controls designed to perform the same function for individual investors at a retail brokerage firm.

the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the Rule. In many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the Rule may be substantially satisfied by existing financial risk management controls and supervisory procedures already implemented by broker-dealers. However, the Commission believes that the Rule should help to assure that a consistent standard applies to all broker-dealers providing any type of market access and, importantly, will address the serious gap that exists with those broker-dealers that today offer "unfiltered" sponsored access.

Under Rule 15c3–5(c)(1)(i), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer, and where appropriate more finely-tuned by sector, security, or otherwise, by rejecting orders if such orders exceed the applicable credit or capital thresholds. Under this provision, a broker-dealer will be required to set appropriate credit thresholds for each customer for which it provides market access, including broker-dealer customers,[88] and appropriate capital thresholds for proprietary trading by the broker-dealer itself. The Commission expects broker-dealers will make such determinations based on appropriate due diligence as to the customer's business, financial condition, trading patterns, and other matters, and document that decision. In addition, the Commission expects the broker-dealer will monitor on an ongoing basis whether the credit thresholds remain appropriate, and promptly make adjustments to them, and its controls and procedures, as warranted.

In addition, because the controls and procedures must be reasonably designed to prevent the entry of orders that exceed the applicable credit or capital thresholds by rejecting them, the broker-dealer's controls must be applied on an automated, pre-trade basis, before orders are routed to the exchange or ATS. Furthermore, because the risk management controls and supervisory procedures should be designed such that rejection must occur if such orders would exceed the applicable credit or capital thresholds, the broker-dealer must assess compliance with the applicable threshold on the basis of exposure from orders entered on an exchange or ATS, rather than relying on a post-execution, after-the-fact determination. Because financial exposure through rapid order entry can be incurred very quickly in today's fast electronic markets, controls should measure compliance with appropriate credit or capital thresholds on the basis of orders entered rather than executions obtained. As noted above, however, in appropriate cases reasonable risk management models may be used to discount the credit or capital exposure generated by outstanding but unexecuted orders.

Under Rule 15c3–5(c)(1)(ii), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Given the prevalence today of high-speed automated trading algorithms and other technology, and the fact that malfunctions periodically occur with those systems, the Commission believes that broker-dealer risk management controls should be reasonably designed to detect malfunctions and prevent orders from erroneously being entered as a result, and that identifying and blocking erroneously entered orders on an order-by-order basis or over a short period of time would accomplish this. These controls also should be reasonably designed to prevent orders from being entered erroneously as a result of manual errors (*e.g.,* erroneously entering a buy order of 2,000 shares at $2.00 as a buy order of 2 shares at $2,000.00). For example, a systematic, pre-trade control reasonably designed to reject orders that are not reasonably related to the quoted price of the security would help prevent erroneously-entered orders from reaching the market.[89] As with the financial risk management controls and supervisory procedures relating to credit or capital thresholds, the broker-dealer also would be required to monitor on a regular basis whether its controls and procedures are effective in preventing the entry of erroneous orders, and promptly make adjustments to them as warranted.

The Commission emphasizes that the financial risk management controls and supervisory procedures described in Rule 15c3–5(c) should not be viewed as a comprehensive list of those that should be utilized by broker-dealers. Instead, the Rule simply sets a uniform baseline standard for the types of financial risk management controls and supervisory procedures that a broker-dealer with market access should implement. A broker-dealer may, for a variety of reasons, implement financial risk management controls and supervisory procedures above and beyond those specifically described in the Rule, depending on the nature of its business, customer base, and other specific circumstances.

E. Regulatory Risk Management Controls and Supervisory Procedures

As noted above, Proposed Rule 15c3–5(c) requires a broker-dealer's risk management controls and supervisory procedures to include certain elements. Proposed Rule 15c3–5(c)(2) deals with regulatory compliance risk, and requires that the risk management controls and supervisory procedures be reasonably designed to ensure compliance with all regulatory requirements that are applicable in connection with market access, including being reasonably designed to: (1) Prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis; (2) prevent the entry of orders for securities that the broker-dealer, customer, or other person, as applicable, is restricted from trading; (3) restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer; (4) assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

Several commenters were concerned with the scope of the Rule, particularly to the extent it requires controls and procedures reasonably designed to ensure compliance with all regulatory requirements applicable in connection with market access.[90] These commenters requested that the Commission clarify that the proposed rule would not impose new regulatory obligations on broker-dealers that provide access to trading on an

[88] The broker-dealer providing market access may also wish to supplement the overall credit limit it places on the activity of its broker-dealer customers with assurances from those broker-dealer customers that they have implemented controls reasonably designed to assure that trading by their individual customers remains within appropriate pre-set credit thresholds.

[89] In this regard, the Commission notes that some markets provide price collars for market orders to help ensure that executions are reasonably related to the quoted price. *See e.g.* NYSE Arca Rule 7.31(a) and Nasdaq Rule 4751.

[90] ConvergEx Letter at 6; SIFMA Letter at 6; ITG Letter at 4.

exchange or ATS.[91] The Commission notes that, as stated in the Proposing Release, it intends these controls and procedures to encompass existing regulatory requirements applicable to broker-dealers in connection with market access, and does not intend to substantively expand upon them.[92] The Commission also notes that the defined term "regulatory requirements" is limited to those "that are applicable in connection with market access." Accordingly, the regulatory risk management controls and supervisory procedures required under Rule 15c3–5(c)(2) must address those regulatory requirements that flow from a broker-dealer having or providing access to trading securities on an exchange or ATS.[93]

In addition, commenters requested that the Commission specify which regulatory requirements must be satisfied on a pre-trade basis.[94] Certain provisions of Proposed Rule 15c3–5(c)(2) require the broker-dealer to "prevent the entry of orders" under certain circumstances, which would necessarily require the broker-dealer to implement its controls on a pre-trade basis. Specifically, Proposed Rule 15c3–5(c)(2)(i) requires the broker-dealer's controls be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. In addition, Proposed Rule 15c3–5(c)(2)(ii) would require the broker-dealer's controls to be reasonably designed to prevent the entry of orders for securities that the broker-dealer, customer, or other person, as applicable, is restricted from trading. Regulatory requirements that *must* be satisfied on a pre-trade basis are those requirements that can effectively be complied with only before an order is entered on an exchange or ATS. Those where pre-trade compliance is required on an order-by-order basis include the marking and locate requirements of Regulation SHO, the conditions that must be satisfied under Regulation NMS before an order can be marked an "intermarket sweep order," various exchange rules applicable to particular order types, and compliance with trading halts. Some commenters also noted that certain regulatory obligations are complied with on a post-trade basis, such as surveillance for fraud and manipulation.[95] Whether compliance is pre-trade or post-trade, however, Proposed Rule 15c3–5(c)(2) would not impose new substantive regulatory requirements on the broker-dealer, but rather establish a clear requirement that the broker-dealer have appropriate mechanisms in place that are reasonably designed to effectively comply with its existing regulatory obligations in an automated high-speed trading environment.

In addition, several commenters asked the Commission to clarify that Rule 15c3–5 does not require broker-dealers to substantially change their existing monitoring or surveillance practices in order to comply with the Rule.[96] While the Commission is not in a position to provide broad assurances in this regard, it believes that in many cases the Rule should reinforce existing regulatory risk management controls already implemented by broker-dealers. Broker-dealers providing market access should review their regulatory risk management controls in light of the Rule, and make adjustments, as appropriate.

In this regard, some commenters requested that the Commission clarify how the proposed rule's requirement to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access would affect a broker-dealer's surveillance procedures.[97] The Commission notes that the requirement in Rule 15c3–5 that the broker-dealer providing market access receive immediate post-trade execution reports is designed to assure the broker-dealer has the information immediately available to effectively control both its financial and regulatory risks. This provision does not require, however, that post-trade surveillances for manipulation, fraud, and other matters occur immediately. These surveillances should occur in a timely fashion as warranted by the facts and circumstances.

A few commenters were concerned with the confidentiality of trading information received by a broker-dealer as a result of the Rule's requirements.[98] The Commission notes that the Rule requires only that appropriate surveillance personnel of the broker-dealer providing market access receive the immediate post-trade execution reports. In this regard, the Commission expects that broker-dealers will establish appropriate safeguards to assure that customer trading information is kept confidential and available only to appropriate personnel for regulatory compliance purposes. The Commission notes that Section 15(f) of the Exchange Act requires broker-dealers registered with the Commission to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker-dealer's business, to prevent the misuse in violation of the Exchange Act, or the rules or regulations thereunder, of material, nonpublic information by the broker-dealer or any person associated with it.[99] A broker-dealer that does not maintain appropriate confidentiality of customer order and trading information could potentially be at risk of violating the federal securities laws and regulations, including Section 15(f) of the Exchange Act.[100]

The Commission is adopting Rule 15c3–5(c)(2) as proposed. As stated in the Proposing Release, the Commission intends these controls and procedures to encompass existing regulatory requirements applicable to broker-

[91] ConvergEx Letter at 6 (stating that the Commission should "make clear that any controls be reasonably designed to ensure that the Market Access Broker complies with its regulatory obligations and not that such controls are required to make the Market Access Broker assume responsibility for preventing violative activity by a Sponsored Broker."); SIFMA Letter at 6 (stating that the Commission should clarify "that broker-dealers providing market access would not be liable for regulatory requirements that are only tangentially related to accessing the market, such as margin requirements, or violative behavior that depends on the intent of the sponsored customer.").

[92] The specific content of the "regulatory requirements" will, of course, adjust over time as laws, rules and regulations are modified.

[93] Regulatory requirements not connected with a broker-dealer's having or providing access to trading securities on an exchange or ATS, as a result of being a member or subscriber thereof, are not included within the scope of the Rule. Although a broad range of regulatory requirements may, to varying degrees, be connected to market access, the Commission would not expect broker-dealers, in response to the Rule, to formally reassess their compliance procedures with respect to rules such as those relating to trading in the over-the-counter market (other than on an ATS) or those relating to the delivery of customer account statements. The Commission emphasizes that, as indicated above, the Rule is intended neither to expand nor diminish the underlying substantive regulatory requirements otherwise applicable to broker-dealers.

[94] ITG Letter at 4; SIFMA Letter 6.

[95] ConvergEx Letter at 6; SIFMA Letter 6; ITG Letter at 4.

[96] Goldman Letter at 6; Deutsche Bank Letter at 4; SIFMA Letter at 7.

[97] Deutsche Bank Letter at 4.

[98] MFA Letter at 2–3; BIDS Letter at 3–4; STANY Letter at 7; letter to Elizabeth M. Murphy, Secretary, Commission, from Ari Burstein, Senior Counsel, Investment Company Institute, March 29, 2010 ("ICI Letter") at 2–3.

[99] 15 U.S.C. 78*o*(f).

[100] *Id. See, e.g.,* Securities Exchange Act Release No. 59555, Admin. Proceeding No. 3–13407 (March 11, 2009) (finding that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") violated Section 15(f) of the Exchange Act by failing to maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent misuse, in violation of the federal securities laws, of material, nonpublic information by Merrill Lynch or any person associated with it, which allowed certain day traders to trade ahead of customer orders to the detriment of Merrill Lynch's institutional customer).

dealers in connection with market access, and not to substantively expand upon them.[101] As with the financial risk management controls and supervisory procedures, this provision will allow flexibility for the details of the regulatory risk management controls and procedures to vary from broker-dealer to broker-dealer, depending on the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the Rule. In many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the Rule should reinforce existing regulatory risk management controls already implemented by broker-dealers. However, the Commission believes that the Rule will assure a consistent standard applies to all broker-dealers providing any type of market access and, importantly, will address the serious gap that exists with those broker-dealers that today offer "unfiltered" sponsored access.

Under Rule 15c3–5(c)(2)(i), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. Rule 15c3–5(c)(2)(ii) also will require the broker-dealer's controls and procedures to prevent the entry of orders for securities that the broker-dealer, customer, or other person, as applicable, is restricted from trading.

The Commission notes that, by requiring the regulatory risk management controls and procedures to be reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis, the Rule would have the effect of requiring the broker-dealer's controls be applied on an automated, pre-trade basis, before orders route to the exchange or ATS. These pre-trade, system-driven controls would therefore be reasonably designed to prevent orders from being sent to the securities markets, if such orders fail to meet certain conditions. The pre-trade controls must, for example, be reasonably designed to assure compliance with exchange trading rules relating to special order types, trading halts, odd-lot orders, SEC rules under Regulation SHO and Regulation NMS.[102] They also must be reasonably designed to prevent the broker-dealer or customer or other person from entering orders for securities it is restricted from trading. For example, if the broker-dealer is restricted from trading options because it is not qualified to trade options, its regulatory risk management controls must be reasonably designed to automatically prevent it from entering orders in options, either for its own account or as agent for a customer. In addition, if a broker-dealer is obligated to restrict a customer from trading in a particular security, then the broker-dealer's controls and procedures must be reasonably designed to prevent orders in such security from being submitted to an exchange or ATS for the account of that customer.

Under Rule 15c3–5(c)(2)(iii), the broker-dealer's controls and procedures also must be reasonably designed to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer. The Commission believes that reasonably designed, effective security procedures such as these are necessary for controlling the risks associated with market access. The Commission expects that elements of these controls and procedures would include: (1) An effective process for vetting and approving persons at the broker-dealer or customer, as applicable, who will be permitted to use the trading systems or other technology; (2) maintaining such trading systems or technology in a physically secure manner; and (3) restricting access to such trading systems or technology through effective mechanisms that validate identity. Among other things, effective security procedures help assure that only authorized, appropriately-trained personnel have access to a broker-dealer's trading systems, thereby minimizing the risk that order entry errors or other inappropriate or malicious trading activity might occur.

Finally, Rule 15c3–5(c)(2)(iv) will require the broker-dealer's controls and procedures to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. Among other things, the Commission expects that broker-dealers will be able to identify the applicable customer associated with each such execution report. The Commission believes that immediate reports of executions will provide surveillance personnel with important information about potential regulatory violations, and better enable them to investigate, report, or halt suspicious or manipulative trading activity. In addition, these immediate execution reports should provide the broker-dealer with more definitive data regarding the financial exposure faced by it at a given point in time. This should provide a valuable supplement to the systematic pre-trade risk controls and other supervisory procedures required by the Rule. As noted above, this provision does not require that post-trade surveillances for manipulation, fraud, and other matters occur immediately. These surveillances should occur in a timely fashion as warranted by the facts and circumstances.

F. Direct and Exclusive Broker-Dealer Control Over Financial and Regulatory Risk Management Controls and Supervisory Procedures

Proposed Rule 15c3–5(d) would require the financial and regulatory risk management controls and supervisory procedures described above to be under the direct and exclusive control of the broker-dealer that is subject to paragraph (b) of the proposed rule. Several commenters requested that the Commission clarify what constitutes "direct and exclusive" control under Rule 15c3–5(d). This provision is designed to eliminate the practice, which the Commission understands exists today under current SRO rules, whereby the broker-dealer providing market access relies on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls. Under the proposal, appropriate broker-dealer personnel should be able to directly monitor the operation of the financial and regulatory risk management controls in real-time. Broker-dealers would have the flexibility to seek out risk management technology and software developed by third parties, but such technology and software would have to be independent of the market access customer or its affiliates. The broker-dealer would have to perform appropriate due diligence to assure that the reasonably designed controls and procedures are effective and otherwise consistent with the

[101] The specific content of the "regulatory requirements" will, of course, adjust over time as laws, rules and regulations are modified.

[102] The Commission notes that Exchange Act Rule 203(b)(2)(i) provides an exception from the uniform locate requirement of Exchange Act Rule 203(b)(1) for a registered broker or dealer that receives a short sale order from another registered broker or dealer that is required to comply with Exchange Act Rule 203(b)(1). For example, where an introducing broker-dealer submits a short sale order for execution, either on a principal or agency basis, to another broker-dealer, the introducing broker-dealer has the responsibility of complying with the locate requirement. The broker-dealer that received the order from the introducing broker-dealer would not be required to perform the locate requirement. However, a broker or dealer would be required to perform a locate where it contractually undertook to do so or the short sale order came from a person that is not a registered broker-dealer. *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (File No. S7–23–03).

provisions of the Rule. The broker-dealer also could allow a third-party that is independent of its market access customers to supplement its own monitoring of the operation of its controls. In addition, the broker-dealer could permit third parties independent of its market access customers to perform routine maintenance or implement technology upgrades on its risk management controls, if the broker-dealer conducts appropriate due diligence regarding any changes to such controls and their implementation. In all circumstances, the broker-dealer with market access would remain fully responsible for the effectiveness of the risk management controls.

The Commission believes that, subject to the limited exception described below, appropriate broker-dealer personnel must have the direct and exclusive obligation to assure the effectiveness of, and the direct and exclusive ability to make appropriate adjustments to, the reasonably designed financial and regulatory risk management controls. This would allow only the broker-dealer providing market access to make, for example, intra-day adjustments to risk management controls to appropriately manage a customer's credit limit. The Commission expects that, by requiring the financial and regulatory risk management controls and supervisory procedures to be under the direct and exclusive control of the broker or dealer, any changes would be made only by appropriate broker-dealer personnel. Accordingly, the broker-dealer with market access could not delegate the oversight of, or power to adjust, its controls to a third party.

The broker-dealer with market access, as the member of the exchange or subscriber of the ATS, is responsible for all trading that occurs under its MPID or other market identifier.[103] If the broker-dealer does not effectively control the risks associated with that activity, it jeopardizes not only its own financial viability, but also the stability of the markets and, potentially, the financial system. The Commission believes this responsibility is too great to allow the requisite risk management controls to be controlled by a third party, and in particular a market access customer which, in effect, would be policing itself. Because the broker-dealer providing market access assumes the immediate financial risks of all orders, as well as regulatory compliance obligations, the Commission believes that it should have direct and exclusive control of the risk management controls and supervisory procedures.

1. Allocation of Certain Regulatory Compliance Obligations to Broker-Dealer Customers

Proposed Rule 15c3–5(d) would require broker-dealers with or providing market access to have direct and exclusive control of the specified risk management controls and supervisory procedures. In the Proposing Release, the Commission stated that "by requiring the financial and regulatory risk management controls and supervisory procedures be under the direct and exclusive control of the broker or dealer, any changes would be made only by appropriate broker-dealer personnel * * *. Accordingly, the broker-dealer could not delegate the oversight of its controls to a third party, or allow any third party to adjust them."[104] The Commission specifically requested comment on whether a market access arrangement where a broker-dealer provided another broker-dealer with market access should be treated differently under the rule and whether an allocation of responsibilities for implementing the risk management controls and supervisory procedures between such broker-dealers should be permitted.

Several commenters responded to the Commission's request for comments on this particular matter, and most supported some form of allocation of the required risk management controls and supervisory procedures among broker-dealers where multiple broker-dealers are involved in a market access arrangement.[105] Other commenters did not address the issue of allocation specifically, but emphasized that the broker-dealer with market access should be ultimately and fully responsible for activity that results from the use of its MPID, even if its market access customer is another broker-dealer.[106]

A few commenters specifically noted that it is commonplace in today's marketplace for market access arrangements to consist of multiple broker-dealers.[107] For instance, one commenter noted that today multiple broker-dealers can be involved in market access arrangements, such as where:

- An introducing broker-dealer routes customer orders to an exchange through the market access broker-dealer and clears through a separate clearing broker;
- A clearing broker provides order entry systems to introducing firms for use by the introducing firm's customers;
- An executing broker uses a market access broker-dealer to access an ATS and clears the trade through a separate prime broker; and
- A broker-dealer uses another broker-dealer for access to exchanges of which it is not a member.[108]

These commenters urged the Commission to permit the broker-dealer with market access to allocate some or all of the required risk management controls and supervisory procedures to other broker-dealers that are part of the market access arrangement.[109]

In addition, several commenters noted that the concept of broker-dealer allocation of regulatory functions is embedded within the current regulatory framework.[110] The examples most often cited by the commenters were NYSE Rule 382 and NASD Rule 3230,[111] and Regulation SHO.[112] Some commenters believed that NYSE Rule 382 and NASD Rule 3230 currently provide an efficient mechanism for the allocation of functions to the party best situated to ensure compliance with a particular regulatory requirement.[113] In light of

[103] *See supra* note 8.

[104] Proposing Release, 75 FR at 4015.

[105] *See* Fortis Letter at 5; EWT Letter at 1; Deutsche Bank Letter at 2; Wedbush Letter at 2; GETCO Letter at 4–5; STANY Letter at 3; ABA Letter at 3–4; ConvergEx Letter at 4–8; SIFMA Letter; JP Morgan Letter at 4; Pershing Letter at 1–3; Penson Letter at 1–2; Lime Letter at 3–4; letters to Elizabeth M. Murphy, Secretary, Commission, from Sandor G. Lehoczky, Managing Director, Jane Street Holding, LLC, March 29, 2010 ("Jane Street Letter") at 1; David A. Marshall, Senior Vice President, Financial Markets Group, Federal Reserve Bank of Chicago, March 25, 2010 ("FRB Chicago Letter") at 4; letter to Mary L. Schapiro, Chairman, Commission, from Kenny Marchant, Randy Neugebauer, and Pete Sessions, Members of Congress, August 11, 2010 at 1 ("Marchant Letter").

[106] FINRA Letter at 2; NYSE Letter at 2.

[107] *See e.g.,* SIFMA Letter at 3; ConvergEx Letter at 3; CBOE Letter at 2; EWT Letter at 3; Marchant Letter at 1.

[108] *See* SIFMA Letter at 3.

[109] *See e.g.,* FINRA Letter at 4; ConvergEx Letter at 4–8; CBOE Letter at 3; EWT Letter at 3–4.

[110] Pershing Letter at 2–3; Penson Letter at 2; STANY Letter at 3; Wedbush Letter at 2; Deutsche Bank Letter at 2–3; EWT Letter at 3; SIFMA Letter at 4.

[111] NYSE Rule 382 and NASD Rule 3230, relating to Carrying Agreements, permit the introducing broker or dealer and the clearing broker or dealer, pursuant to a written agreement, to specifically allocate functions and responsibilities between the parties. These rules require that such agreements specifically account for the following functions: (1) Opening, approving and monitoring of accounts, (2) extension of credit, (3) maintenance of books and records, (4) receipt and delivery of funds and securities, (5) safeguarding of funds and securities, (6) confirmations and statements and (7) acceptance of orders and execution of transactions.

[112] The Commission notes that Regulation SHO provides an exception from the uniform locate requirement for a registered broker or dealer that receives a short sale order from another registered broker or dealer that is required to comply with Exchange Act Rule 203(b)(1). *See supra* note 102.

[113] Pershing Letter at 3; Lime Letter at 4.

these rules, some commenters suggested that the proposed Rule's requirement that the broker-dealer with market access have direct and exclusive control of the risk management controls and supervisory procedures, without providing for the reasonable allocation of the same, would be inconsistent or in tension with currently accepted broker-dealer practices and current SRO and SEC rules.[114]

Several commenters emphasized that the relative positions of the broker-dealers in a market access arrangement would impact the efficacy of the risk management control or supervisory procedure used to reasonably ensure a particular regulatory requirement. For instance, some commenters stressed that an introducing broker would be best situated to implement the pre-trade controls required by the Rule because the introducing broker, by virtue of its direct relationship with the ultimate customer, would have the critical customer information necessary for compliance.[115] Based on a similar rationale, some commenters stated that the introducing broker would be better situated to identify scienter-based violations such as marking-the-close, wash sales, or other forms of manipulation.[116]

These commenters generally endorsed an allocation model similar to NYSE Rule 382 and NASD Rule 3230 that would permit the broker-dealers engaging in the market access arrangement to contractually allocate specific risk management controls and supervisory procedures based on which firm was better situated to perform the particular control or procedure.[117] However, other commenters suggested that the Commission take a more prescriptive approach and specify the particular functions that potentially could be allocated between broker-dealers in a market access arrangement.[118]

Some commenters offered additional arguments in support of the allocation of risk management controls and supervisory procedures among broker-dealers. One commenter suggested that the allocation of risk management controls and supervisory procedures would be appropriate because a broker-dealer using the MPID of another broker-dealer with market access would be a regulated entity whose trading activity would be identifiable and referable to the applicable SRO.[119] Other commenters believed that, while the allocation of risk management controls and supervisory procedures between broker-dealers should be permitted, the ultimate responsibility for compliance with the market access rule and any applicable regulatory requirements should remain with the broker-dealer with market access.[120]

Some commenters opined that where a broker-dealer provides access to another broker-dealer, the broker-dealer with market access should be able to reasonably rely upon the representations of the introducing broker that appropriate risk management controls and supervisory procedures are in place.[121] One commenter specifically noted that a broker-dealer with access should not be able to ignore "obvious red flags," but should be able to otherwise reasonably rely on an introducing broker to comply with its obligations to "supervise its business and conduct of its customers."[122]

Some commenters suggested that the reasonable reliance of the broker-dealer with market access should be based in part on its own policies and procedures that would ascertain the effectiveness of the risk management controls and supervisory procedures.[123] For instance, one commenter stated the broker-dealer with market access should have procedures to support its reasonable reliance, including representations and warranties from the broker-dealer that has been allocated the risk management controls and supervisory procedures.[124] Another commenter agreed that the broker-dealer with market access should have procedures to ensure compliance with the Rule.[125] Another commenter suggested the introducing broker take responsibility for monitoring and managing the credit and capital thresholds of its customer.[126]

Three commenters, all SROs, indicated that broker-dealers with market access are already required to have supervisory policies related to orders generated as a result of market access.[127] FINRA asserted that it had "consistently taken the view that, under FINRA rules, a firm providing market access to a third party, including another broker-dealer, or otherwise allowing a third party to use the firm's [MPID] is responsible for the trading conducted pursuant to that relationship. Thus, for example, under NASD Rules 3010 and 3012, as well as Incorporated NYSE Rule 342, a member must control, monitor and supervise all orders for which it is the broker of record, including orders entered by customers through market access arrangements with the member. Members providing market access to customers must also have controls and supervisory procedures in place that are reasonably designed to ensure compliance with applicable regulatory requirements."[128]

FINRA also stated its belief that both the broker-dealer with market access and the broker-dealer being provided market access should retain the respective, independent obligations that would exist if they accessed the market directly.[129] FINRA explained that the independent regulatory obligations of a broker-dealer that is provided market access should not alter the fact that the broker-dealer with market access is responsible for trading conducted using its MPID.[130]

NYSE expressed a view similar to FINRA that a broker-dealer with market access should be subject to the Rule with respect to all of its market access customers, including other broker-dealers.[131] NYSE also noted that the concerns identified by the Commission in connection with market access arrangements are just as relevant for broker-dealer customers as for other types of market participants.[132] In addition, NYSE explained that because each exchange is responsible for

[114] *See, e.g.,* Pershing Letter at 2–3; Wedbush Letter at 2; ConvergEx Letter at 10–11.

[115] BATS Letter at 3; ConvergEx Letter at 5; EWT Letter at 3; CBOE Letter at 3.

[116] *See* e.g., ConvergEx at 7.

[117] SIFMA Letter at 4; EWT Letter at 3; Pershing Letter at 1–3; Lime Letter at 4; Fortis Letter at 5; Wedbush Letter at 2, Deutsche Bank Letter at 2; GETCO Letter 4–5; STANY Letter at 3. *See also* ITG Letter at 6.

[118] JP Morgan Letter at 2–4; FRB Chicago Letter at 4; letter to Elizabeth M. Murphy, Secretary, Commission, from Douglas J. Engmann, President, and C. Mark Bold, Senior Advisor, Engmann Options, Inc., March 16, 2010 ("Engmann Letter") at 2.

[119] *See* Penson Letter at 2.

[120] SIFMA Letter at 4; Fortis Letter at 5. Fortis believed that "it is a broadly accepted principle of regulation that whilst performance of an obligation may be delegated, responsibility for that obligation cannot. Therefore it should be possible to delegate to a third party, including a client broker/dealer, all operational aspects of compliance with the proposed rules but not the ultimate responsibility for compliance with the proposed rules. In practice this should mean that the party to whom the rules apply directly must have procedures and monitoring in place on an ongoing basis to ensure that the proposed rules are followed." *See also* Lime Letter at 2–3; FINRA Letter at 2.

[121] *See* SIFMA Letter at 4; Pershing Letter at 2; Penson Letter at 2.

[122] Pershing Letter at 3.

[123] *See* Lime Letter at 3; Fortis Letter at 5; SIFMA Letter at 4.

[124] *See* SIFMA Letter at 4.

[125] *See* Fortis Letter at 5. *See also* Lime Letter at 4.

[126] GETCO Letter 4–5.

[127] FINRA Letter at 2; BATS Letter at 2–3; Nasdaq Letter at 2.

[128] FINRA Letter at 2.

[129] FINRA Letter at 2.

[130] FINRA Letter at 2.

[131] NYSE Letter at 2.

[132] NYSE Letter at 2.

monitoring orders submitted by its member firms, and exchanges must be able to hold a specific party responsible for compliance with applicable exchange rules on each order, it would be impractical for the exchange to have to determine the regulatory status of the underlying market participant to discern whether the exchange is required to follow up with the broker-dealer with market access or the underlying broker-dealer customer.[133] NYSE stated that this inefficiency would be amplified if an exchange had to determine whether or not the broker-dealer customer was itself a member of the exchange.[134]

One commenter, however, took the position that a broker-dealer with market access should have no obligations to supervise another broker-dealer with which it has a contractual relationship under NYSE 342(a) and NASD 3010(b).[135] This is because the broker-dealer with market access would not know the customers of the introducing broker, and therefore would not be able to devise supervisory systems reasonably designed to ensure compliance with the applicable regulatory requirements.[136] The commenter did, however, believe that the broker-dealer with market access should conduct reviews that are reasonably designed to ensure compliance with the SRO marketplace rules.[137]

Finally, several commenters expressed concern that the Rule would require every broker-dealer in the chain of a market access arrangement to implement pre-trade controls and thereby introduce redundancies and inefficiencies into the order routing process.[138] Some of these commenters were also concerned that if the Rule required multiple broker-dealers to implement pre-trade checks it could make these arrangements impractical and the benefits of volume aggregation to achieve tiered pricing, cooperative leveraging of broker-dealer technology, and non-member access to markets could be reduced or eliminated.[139] On the other hand, some commenters argued the rule properly should only be applicable to the broker-dealer with market access, because application to all broker-dealers involved in the execution and clearing of a trade would be unnecessary and duplicative.[140]

After careful consideration of the comments submitted with respect to the possible allocation of certain compliance responsibilities to broker-dealer customers, the Commission has determined to permit, subject to certain conditions, broker-dealers providing market access to reasonably allocate control over certain regulatory risk management controls and supervisory procedures to customers that are registered broker-dealers who, based on their position and relationship with an ultimate customer, can more effectively implement them.

Specifically, the Commission is modifying Proposed Rule 15c3–5(d) to permit a broker-dealer providing market access to reasonably allocate, by written contract, control over specific regulatory risk management controls and supervisory procedures to a customer that is a registered broker-dealer, so long as the broker-dealer providing market access has a reasonable basis for determining that such customer, based on its position in the transaction and relationship with an ultimate customer, has better access to that ultimate customer and its trading information such that it can more effectively implement the specified controls and procedures.[141] The Commission believes a broker-dealer providing market access could allocate to a customer that is a registered broker-dealer, consistent with this standard, control over those regulatory risk management controls and supervisory procedures encompassed by paragraph (c)(2) of Rule 15c3–5 that require specific knowledge of the ultimate customer and its trading activity that the broker-dealer providing market access would not have. These could include obligations under suitability and other "know your customer" rules,[142] since the broker-dealer with the direct customer relationship may have better access than the broker-dealer with market access to that ultimate customer's information to more effectively assess the ultimate customer's financial resources and investment objectives. For similar reasons, the broker-dealer providing market access could allocate to its customer that is a registered broker-dealer control over the mechanisms—required by paragraph (c)(2)(ii) of Rule 15c3–5—for preventing the ultimate customer from trading securities such customer is restricted from trading. Control also could be allocated with respect to surveillance for manipulation or fraud in the ultimate customer's account—such as wash sales, marking the close, and insider trading—since the broker-dealer providing market access may only see aggregate trading by the broker-dealer customer in an omnibus or other account, and not trading at the individual customer account level. If a broker-dealer providing market access were to reasonably allocate control over these functions to a customer that is a registered broker-dealer, however, the Commission expects the broker-dealer providing market access to immediately provide its customer that is a registered broker-dealer with the post-trade executions reports it receives from exchanges and ATSs pursuant to paragraph (c)(2)(iv) of Rule 15c3–5, so that the broker-dealer customer can effectively surveil for fraud and manipulation in the accounts of the ultimate customers. Finally, in accordance with the requirements of Regulation SHO, the broker-dealer providing market access may rely on a registered broker-dealer customer's compliance with the locate requirement of Rule 203(b)(1) of Regulation SHO, unless the broker-dealer providing market access contractually undertook responsibility for compliance with the locate requirement.[143]

The foregoing is not an exhaustive list of the regulatory risk management controls and supervisory procedures for which control may be reasonably allocated to a customer that is a registered broker-dealer, but in all cases the broker-dealer providing market access must be prepared to demonstrate a reasonable basis for determining that the broker-dealer customer, based on its position in the transaction and relationship with an ultimate customer, has better access than the broker-dealer with market access to that ultimate customer and its trading information such that it can more effectively implement the specific function over which control is allocated.[144] This is consistent with one of fundamental principles underlying Rule 15c3–5, that the controls over the financial and regulatory risks associated with market access should be overseen directly by the broker-dealers providing that access, given their responsibility for trading

[133] NYSE Letter at 2.

[134] NYSE Letter at 2.

[135] ConvergEx Letter at 7.

[136] ConvergEx Letter at 7.

[137] ConvergEx Letter at 5.

[138] *See* BATS Letter at 3–4; EWT Letter at 4; Deutsche Bank Letter at 2; ABA Letter at 3–4; Marchant Letter at 1.

[139] *See e.g.,* Wedbush Letter at 2–3; Penson Letter at 3; Lime Letter at 4–5.

[140] *See* FINRA Letter at 2.

[141] The Commission notes that such broker-dealer that can more effectively implement the specified controls or procedures likely would also be able to more efficiently do so.

[142] *See, e.g.,* FINRA Rule 2010; NASD Rules 2310 and IM–2310–3; and NYSE Rule 405.

[143] *See* 17 CFR 242.203(b)(1).

[144] The Commission notes that, generally, a member of an SRO would be able to more effectively implement a regulatory obligation to comply with rules specific to a particular SRO than a broker-dealer that is not a member of such SRO.

that occurs under their MPIDs and the fact that in general they are better positioned to more effectively implement those controls. To maximize the effectiveness of the reasonably designed risk management controls in connection with market access, however, paragraph (d)(1) of Rule 15c3–5 accommodates allocation of control over a regulatory risk management control or supervisory procedure in those circumstances where—and only where—another registered broker-dealer is better positioned to implement it than the broker-dealer providing market access.

Paragraph (d)(1) of Rule 15c3–5 also requires that any reasonable allocation of control contemplated thereby be in a written contract and specify the regulatory risk management controls and supervisory procedures over which control is being allocated. Paragraph (d)(2) of Rule 15c3–5 makes clear that any such allocation of control does not relieve the broker-dealer providing market access from any obligation under the Rule, including the overall responsibility to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access. Thus, the broker-dealer providing market access remains ultimately responsible for the performance of any regulatory risk management control or supervisory procedure for which control is allocated to a customer that is a registered broker-dealer under Rule 15c3–5(d).

Consistent with this approach, the Commission expects a broker-dealer that provides market access and desires to reasonably allocate control over specified functions to a customer that is a registered broker-dealer as described above, to:

(1) Conduct a thorough due diligence review to establish a reasonable basis for determining that the registered broker-dealer customer to which control has been allocated has the capability and, based on its position in the transaction and relationship with an ultimate customer, has better access than the broker-dealer with market access to that ultimate customer and its trading information such that it can more effectively implement the reasonably designed risk management controls and supervisory procedures that are specifically allocated to it;

(2) Enter into a written contract with such registered broker-dealer customer that clearly articulates the scope of the arrangement and the specific responsibilities of each party, consistent with the foregoing discussion; and

(3) In accordance with Rule 15c3–5(e), establish, document, and maintain a system to regularly review the performance of the registered broker-dealer customer under such contract, and the effectiveness of the allocated controls and procedures, and promptly address any performance weaknesses, including termination of the allocation arrangement if warranted.

In the Proposing Release, the Commission expressed concern that the broker-dealer providing sponsored access may not utilize any pre-trade risk management controls (*i.e.,* "unfiltered" or "naked" access), and thus could be unaware of the trading activity occurring under its market identifier and have no mechanism to control it.[145] In addition, the Commission noted that some broker-dealers providing sponsored access may simply rely on assurances from their customers that appropriate risk controls are in place and the Commission concluded that risk management controls and supervisory procedures that are not applied on a pre-trade basis or that are not under the exclusive control of the broker-dealer are inadequate to effectively address the risks of market access arrangements, and pose a particularly significant vulnerability in the U.S. national market system.

While the Commission believes it is appropriate to permit the reasonable allocation of certain regulatory risk management controls and supervisory procedures, as described above, to a customer that is a registered broker-dealer, the Commission continues to be concerned about circumstances where broker-dealers providing market access simply rely on assurances from their customers that appropriate risk controls are in place. In the Commission's view these concerns are present even if the customer of the broker-dealer with market access is a broker-dealer. Accordingly, the Commission emphasizes that in any permitted allocation arrangement, the broker-dealer providing market access may not merely rely on another broker-dealer's attestation that it has implemented appropriate controls or procedures, or has agreed to be responsible for the same. Instead, as noted above, the broker-dealer providing market access should independently review, on an ongoing basis, the effectiveness of the reasonably designed controls or procedures allocated to a customer that is a registered broker-dealer and promptly address any weaknesses.

One commenter took the position that a broker-dealer with market access does not have a responsibility to supervise the activity of customers of an introducing broker, in part, because it would not have a direct relationship with the ultimate customer and would be unable to discern salient facts such as the customer's financial condition, risk tolerance, trading strategies, objectives or account holdings.[146] While the Commission agrees, as discussed above, that a customer that is a registered broker-dealer may reasonably be allocated control of certain regulatory risk management controls and supervisory procedures that, based on its position in the transaction and relationship with the ultimate customer, it can more effectively implement, the Commission believes the broker-dealer providing market access should retain ultimate responsibility for trading activity that occurs by virtue of its MPID.[147]

Finally, the Commission notes that various commenters expressed concern that the Rule would require every broker-dealer in the chain of a market access arrangement to implement pre-trade controls which would introduce redundancies and inefficiencies into the order routing process.[148] The Commission emphasizes that the Rule is applicable to the broker-dealer with market access, not every broker-dealer in a market access arrangement. Under the Rule, the broker-dealer with market access is required to reasonably ensure that appropriate risk management controls and supervisory procedures are utilized in relation to its market access, including appropriate pre-trade controls. However, the Rule does not require multiple layers of pre-trade controls for any order and is not intended or designed to introduce any unnecessary or unwarranted redundancies and inefficiencies into the order routing process for market access arrangements.

2. Risk Management Systems Developed by Others

In the Proposing Release, the Commission specifically addressed the application of the Rule's "direct and exclusive control" provisions to the use of risk management technology developed by third parties. In relevant part, the Commission stated that:

> Under the proposal, appropriate broker-dealer personnel should be able to directly monitor the operation of the financial and regulatory risk management controls in real-

[145] *See* Proposing Release, 75 FR at 4008.

[146] *See* ConvergEx Letter at 7.

[147] *See* FINRA Letter at 2; BATS Letter at 2–3; Nasdaq Letter at 2. *See also,* FINRA Rule 3310.

[148] *See* BATS Letter at 3–4; EWT Letter at 4; Deutsche Bank Letter at 2; ABA Letter at 3–4.

time. Broker-dealers would have the flexibility to seek out risk management technology developed by third parties, but the Commission expects that the third parties would be independent of customers provided with market access. The broker-dealer would also be expected to perform appropriate due diligence to help assure controls are effective and otherwise consistent with the provisions of the proposed rule. The Commission understands that such technology allows the broker or dealer to exclusively manage such controls. The broker-dealer also could allow a third party that is independent of customers to supplement its own monitoring of the operation of its controls. In addition, the broker-dealer could permit third parties to perform routine maintenance or implement technology upgrades on its risk management controls, so long as the broker-dealer conducts appropriate due diligence regarding any changes to such controls and their implementation. Of course, in all circumstances, the broker-dealer would remain fully responsible for the effectiveness of the risk management controls.[149]

Several commenters addressed the Commission's position with respect to risk management systems developed by third parties, as articulated in the Proposing Release. One commenter, for example, was unclear as to whether a broker-dealer providing market access could outsource the development of a risk management system to a third party technology service provider.[150] The commenter suggested that the Commission clarify that outsourcing to a technology service provider is permissible by removing the word "exclusive" from paragraph (d) of the proposed Rule.[151] Another commenter asked that the Commission clarify whether third party software could be under the control of a third party vendor, provided that the broker-dealer providing market access is able to control the parameters and thresholds applied by the software.[152] Commenters also requested that the Commission clarify whether a broker-dealer providing market access could use risk management controls provided by exchanges and ATSs to fulfill its obligations under the Rule, provided that the broker-dealer providing market access could control the parameters of the risk management controls.[153] One commenter suggested it would be helpful "in understanding the contours of the 'direct and exclusive' control requirement" if the Commission provided a non-exclusive list of examples of third party arrangements that would be acceptable and unacceptable under the Rule.[154]

Two commenters agreed with the premise that a broker-dealer providing market access should be permitted to use third party risk management systems, provided that that broker-dealer is able to monitor trading activity in real-time and maintain control of the system.[155] One of these commenters asserted that this should include third party risk management systems provided by exchanges.[156] Another commenter noted that risk management software and controls provided by a market center are common and provide an efficient and effective means for broker-dealers to monitor and control their risk exposure.[157] Another commenter stated that to the extent that the Rule permits the use of exchange-provided risk management tools, the Commission should indicate whether a broker-dealer providing market access could rely on exchange representations regarding the efficacy of such tools without requiring further investigation or monitoring of those systems by the broker-dealer.[158] That commenter believed independent verification should not be necessary unless the broker-dealer becomes aware of problems with the system.[159]

One commenter opined that a broker-dealer providing market access should not be permitted to utilize a risk management system provided by a customer or an affiliate of a customer.[160] However, the commenter also requested that the Commission clarify whether a broker-dealer providing market access could rely on the representations from a third-party provider of risk management systems regarding its affiliations.[161] Another commenter asked that the Commission clarify whether a third party that is an affiliate, but not a controlled affiliate, of a customer to which a broker-dealer provides market access, would be considered "independent" of the customer. That commenter did not believe that such non-controlled affiliates should be excluded from providing risk management software.[162] The commenter also requested that the Commission clarify whether "independence" would be "expected," as stated in the proposing Release, or required.[163]

Two commenters believed that a broker-dealer providing market access should be able to utilize risk management systems provided by customers or entities affiliated with customers.[164] One commenter opined that technology developed by customers or entities affiliated with customers can be just as effective as technology developed by independent third parties or broker-dealers.[165] The commenter also thought the Rule should allow the flexibility to use customer technology to help to mitigate the potential that a broker-dealer's proprietary trading desk could gain a competitive advantage over its customer trading desk as a result of a negative impact on execution speed and latencies.[166]

Another commenter stated that the broker-dealer providing market access should be responsible for determining baseline limits for its customer but opined that "there are other entirely appropriate adjustments that occur (and should continue to occur) outside of the broker-dealer's exclusive control."[167] The commenter noted that it is not unusual for sophisticated customers to have front-end systems that permit such customers to independently tighten their aggregate credit, size or position limits, or impose additional or enhanced trading restrictions on a particular trader or group of traders.[168] Thus, the commenter concluded that, if the "baseline limits are established and enforced by the [broker-dealer providing market access], customers should be permitted to tighten risk management controls as they see fit."[169]

One commenter advised the Commission to permit a broker-dealer providing market access to purchase a risk management system from its customer, and then use that risk management system to monitor the customer's trading activity.[170] The commenter opined that, in such instances, the broker-dealer providing market access should be able to demonstrate that it has disabled the customer's control of the system, and that the acquired system is able to perform effectively, consistent with the Rule's standards.[171]

Finally, one commenter suggested that requiring a broker-dealer providing

[149] Proposing Release, 75 FR at 4015.
[150] ConvergEx Letter at 11.
[151] ConvergEx Letter at 11.
[152] SIFMA Letter at 5.
[153] SIFMA Letter at 5; BIDS Letter at 3; Deutsche Bank Letter at 6; CBOE Letter at 4.
[154] SIFMA Letter at 5–6.
[155] Goldman Letter at 7; MFA Letter at 2.
[156] Goldman Letter at 7.
[157] BIDS Letter at 2.
[158] Deutsche Bank Letter at 6.
[159] Deutsche Bank Letter at 6.
[160] Goldman Letter at 7.
[161] Goldman Letter at 7.
[162] SIFMA Letter at 5.
[163] SIFMA Letter at 5.
[164] MFA Letter at 2; ConvergEx Letter at 11.
[165] MFA Letter at 2.
[166] MFA Letter at 2.
[167] ConvergEx Letter at 11.
[168] ConvergEx Letter at 11.
[169] ConvergEx Letter at 11.
[170] Lime Letter at 7.
[171] Lime Letter at 7.

market access to use a risk management system independent from the customer "could destroy the business model" for certain market access arrangements involving brokers or options traders, given the trading delays those systems might require.[172]

After careful consideration of the comments submitted on the Rule's "direct and exclusive control" provisions in relation to third party providers of risk management technology, the Commission is adopting Rule 15c3–5(d) as proposed. As an initial matter, the Commission confirms the position taken in the Proposing Release that a broker-dealer providing market access can use risk management tools or technology provided by a third party that is independent of the customer, so long as it has direct and exclusive control over those tools or technology and performs appropriate due diligence. Specifically, the broker-dealer could "outsource" to an independent third party the design and building of the risk management tools or technology for the broker-dealer, and the performance of routine maintenance, so long as the broker-dealer performs appropriate due diligence as to their effectiveness. In addition, the risk management tools or technology could be located at the facilities of the independent third party, so long as the broker-dealer can directly monitor their operation and has the exclusive ability to adjust the controls. Further, the independent third party could, in response to specific direction from the broker-dealer on a case-by-case basis, make an adjustment to the controls as agent for the broker-dealer.[173]

The independent third party could be another broker-dealer, an exchange or ATS, a service bureau, or other entity that is not an affiliate,[174] and is otherwise independent, of the market access customer. When evaluating whether a technology provider is independent of the customer, the Commission will look at the substance rather than the form of the relationship. For example, the Commission would not consider a third party independent from a customer just because it is technically not an affiliate, if it has a material business or other relationship with the customer which could interfere with the provision of effective risk management technology to the broker-dealer.

The Commission acknowledges that certain market access customers may have sophisticated and effective technology to manage the risks related to their particular trading strategies. However, the Commission believes that direct responsibility for having an effective system of reasonably designed risk management controls belongs with the broker-dealer providing market access, as the regulated entity through which access to the markets is obtained and the party responsible for trading occurring under its MPID. The Rule would not preclude the customer from having risk management controls that exceed those under the direct and exclusive control of the broker-dealer—however, as required above, the broker-dealer cannot rely on risk management technology that is designed, built, maintained or otherwise under the control of the customer or its affiliates. In addition, the Commission believes a reasonably designed system of risk management controls and supervisory procedures should rely on technology that is developed independent of the market access customer or its affiliates. Requiring such independence should reduce the risk that the effectiveness of these critical controls could be undermined by allowing market access customers to develop the tools to, in effect, police themselves. One commenter asked whether a broker-dealer providing market access could rely on a customer representation of independence from the technology provider.[175] The Commission believes that simple reliance on a customer representation of independence is insufficient; instead, any broker-dealer providing market access that intends to rely on risk management technology developed by third parties should conduct an appropriate level of due diligence, including with respect to the independence of the developer from the market access customer or its affiliates.

The Commission recognizes that market access arrangements have developed in many different ways, and there has been a similarly varied response to the development and use of risk management technology. Accordingly, the Commission emphasizes that it is not requiring a "one-size-fits-all" approach to risk management. The direct and exclusive control provisions allow for a variety of reasonable risk management approaches, consistent with the Rule, and, as discussed above, will not require that a broker-dealer develop the risk management technology itself. Instead, the direct and exclusive control provisions require the broker-dealer providing market access to have the ability to directly monitor and the exclusive ability to adjust, as appropriate, the operation of the financial and regulatory risk management controls in real-time. As stated in the Proposing Release,[176] the direct and exclusive control provision is designed to eliminate the practice whereby the broker-dealer providing market access may rely on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls. The Commission believes the potential risks presented by market access are too great to permit a broker-dealer to delegate the control of these critical risk management systems to the customer or another third party.

The Commission reaffirms the position taken in the Proposing Release that the broker-dealer providing market access, consistent with the reasonably designed risk management system required by the Rule, could permit a third party that is independent of customers to supplement its own monitoring of the operation of its risk management controls.[177] The broker-dealer providing market access also could allow a third party that is independent of customers to perform routine maintenance or the implementation of technology upgrades on its risk management controls; but the broker or dealer with market access should conduct appropriate due diligence regarding any changes to such controls and their implementation to assure their continued effectiveness. One commenter asked whether a broker-dealer providing market access could rely on an exchange representation regarding the efficacy of exchange-provided risk management technology and software, and argued that independent verification should be unnecessary unless the broker-dealer becomes aware of a problem.[178] As noted above, the Commission believes that a broker-dealer relying on risk management technology developed by third parties should perform appropriate due diligence to help assure the controls are reasonably designed, effective, and otherwise consistent with the Rule. Mere reliance on representations of the third party technology developer—even if an exchange or other regulated

[172] Fortis Letter at 12.

[173] The Commission notes that any adjustment to the controls by a third party as agent for the broker-dealer should be made pursuant to specific direction, on a case-by-case basis, from the broker-dealer rather than pursuant to standing instructions.

[174] An affiliate includes any person that, directly or indirectly, controls, is under common control with, or is controlled by, the customer.

[175] Goldman Letter at 7.

[176] Proposing Release, 75 FR at 4014.

[177] Proposing Release, 75 FR at 4015.

[178] *See* Deutsche Bank Letter at 6.

entity—is insufficient to meet this due diligence standard.

G. Regular Review of Risk Management Controls and Supervisory Procedures

Proposed Rule 15c3–5(e) would require a broker-dealer with or providing market access to establish, document, and maintain a system for regularly reviewing the effectiveness of its reasonably designed risk management controls and supervisory procedures and for promptly addressing any issues. Proposed Rule 15c3–5(e)(1) would require, among other things, the broker-dealer to review, no less frequently than annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures, and to conduct that review in accordance with written procedures and document each such review. That provision also would require the broker-dealer to preserve a copy of its written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

Finally, Proposed Rule 15c3–5(e)(2) would require the Chief Executive Officer (or equivalent officer) of the broker-dealer, on an annual basis, to certify that its risk management controls and supervisory procedures comply with the Rule and that the broker-dealer conducted the regular review. These CEO certifications also are required to be preserved by the broker-dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act.

In the Proposing Release, the Commission stated that, when establishing the specifics of this regular review, it expects that each broker-dealer with market access would establish written procedures that are reasonably designed to assure that the broker-dealer's controls and procedures are adjusted, as necessary, to help assure their continued effectiveness in light of any changes in the broker-dealer's business or weaknesses that have been revealed.

The Commission received eleven comment letters that discussed the proposed requirements for a regular review of the effectiveness of a broker-dealer's risk management controls and supervisory procedures, and particularly the annual certification of the CEO (or equivalent officer).[179] A few commenters indicated that the review and certification requirements would be burdensome and costly, and would divert supervisory resources from other projects.[180] One commenter expressed concern that various requirements for separate CEO certifications for different rules could be unwieldy and burdensome.[181] Others commenters recommended that the certification requirement be imposed on another officer (such as the Chief Risk Officer, Chief Compliance Officer, or an equivalent officer) or an outside firm.[182] A few commenters requested clarification as to whether the proposed CEO certification requirement would create a completely new obligation or whether it could be viewed as encompassed by existing certification processes, such as the FINRA Rule 3130 certification process.[183] In addition, several commenters recommended that broker-dealers should be able to satisfy the CEO certification requirement through the existing FINRA Rule 3130 certification or other existing certification processes.[184]

As proposed, Rule 15c3–5(e) is intended to assure that a broker-dealer with or providing market access implements supervisory review mechanisms to support the effectiveness of its risk management controls and supervisory procedures on an ongoing basis. In the Proposing Release, the Commission expressed the view that, because of the potential risks associated with market access, and the dynamic nature of both the securities markets and the businesses of individual broker-dealers, it is critical that a broker-dealer with market access charge its most senior management—specifically the CEO or an equivalent officer—with the responsibility to review and certify the efficacy of its controls and procedures at regular intervals.[185] The Commission believes that this certification requirement is an integral component of the risk management controls and supervisory procedures contemplated by Rule 15c3–5, and should help assure their effectiveness. As noted in the Proposing Release, the Commission also believes that the CEO certification requirement should serve to bolster broker-dealer compliance programs, and promote meaningful and purposeful interaction between business and compliance personnel.[186]

The Commission is adopting Rule 15c3–5(e) as proposed. In the Proposing Release, the Commission noted that Proposed Rule 15c3–5 is "intended to complement and bolster existing rules and guidance issued by the exchanges and by FINRA with respect to market access."[187] The Commission would expect, in many cases, the annual CEO certification required under Rule 15c3–5(e)(2) to be completed in conjunction with a firm's annual review and certification of its supervisory systems pursuant to FINRA Rule 3130. However, the CEO certification contemplated by the Rule is a separate and distinct certification from the FINRA 3130 certification or any other similar certification process.[188] That said, the Commission believes a FINRA member could combine in the same document the CEO certification required by Rule 15c3–5(e)(2) with the FINRA 3130 or other required certifications, so long as the substance of each of the required certifications is contained in that document.

III. Paperwork Reduction Act

The Rule contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[189] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted the provisions to the Office of Management and Budget ("OMB") for review. The title for the proposed collection of information requirement is "Rule 15c3–5, Market Access." 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.

In the Proposing Release, the Commission solicited comments on the collection of information requirements. The Commission noted that the estimates of the effect that the Rule would have on the collection of information were based on data from various industry sources. As discussed above, the Commission received 47

[179] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, February 21, 2010 ("Lek Letter") at 3; Christopher Carter, April 19, 2010 ("Carter Letter") at 7; Andrew C. Small, General Counsel, Scottrade, Inc., March 30, 2010 ("Scottrade Letter") at 1; ITG Letter at 9–10; Deutsche Bank Letter at 6–7; ABA Letter at 5–6; EWT Letter at 5; Engmann Letter at 3; Pershing Letter at 4; BIDS Letter at 4; Goldman Letter at 7.

[180] *See* Lek Letter at 3; ITG Letter at 9–10; ABA Letter at 5–6; Carter Letter at 7.

[181] Deutsche Bank Letter at 6–7.

[182] *See* EWT Letter at 5; *see also* Carter Letter at 7.

[183] *See* Engmann Letter at 3; Pershing Letter at 4; BIDS Letter at 4; Goldman Letter at 7.

[184] *See* Engmann Letter at 3; Pershing Letter at 4; BIDS Letter at 4; ITG Letter at 9–10; Deutsche Bank Letter at 6–7; ABA Letter at 5–6; SIFMA Letter at 9; Scottrade Letter at 1.

[185] Proposing Release, 75 FR at 4015.

[186] *See* Proposing Release, 75 FR at 4015.

[187] *See* Proposing Release, 75 FR at 4010.

[188] The Commission also notes that Rule 15c3–5(e)(2) may apply to broker-dealers that are not FINRA members.

[189] 44 U.S.C. 3501 *et seq.*

comment letters on the proposed rulemaking. Of the comment letters the Commission received, some commenters addressed the collection of information aspects of the proposal.[190]

A. Summary of Collection of Information

Rule 15c3–5 will require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures to assist it in managing the financial, regulatory, and other risks, such as legal and operational risks, of this business activity. The system of risk management controls and supervisory procedures, among other things, shall be reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access. The financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. As a practical matter, the Rule will require a respondent to set appropriate credit thresholds for each customer for which it provides market access and appropriate capital thresholds for proprietary trading by the broker-dealer itself. The regulatory risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that do not comply with regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. Each such broker or dealer will be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[191]

In addition, the Rule will require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required under the Rule and for promptly addressing any issues. Among other things, the broker or dealer will be required to review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures and document that review. Such review will be required to be conducted in accordance with written procedures and will be required to be documented. The broker or dealer will be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act,[192] and Rule 17a–4(b) under the Exchange Act, respectively.[193]

In addition, the Chief Executive Officer (or equivalent officer) of the broker or dealer, on an annual basis, will be required to certify that such risk management controls and supervisory procedures comply with the Rule, that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act.[194]

B. Use of Information

The requirement that a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, shall be reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access, will help ensure that such brokers or dealers have sufficiently effective controls and procedures in place to appropriately manage the risks associated with market access. The requirement to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17–4(e)(7) under the Exchange Act will help to assure that appropriate written records were made, and will be used by the Commission staff and SRO staff during an examination of the broker or dealer for compliance with the Rule.

The requirement to maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required under the Rule will help to ensure that the risk management controls and supervisory procedures remain effective. A broker-dealer will use these risk management controls and supervisory procedures to fulfill its obligations under the Rule, as well as to evaluate and help ensure its financial integrity more generally. The Commission and SROs will use this information in their exams of the broker or dealer, as well as for regulatory purposes. The requirement that a broker or dealer preserve a copy of written procedures, and documentation of each such regular review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively, will help to assure that the regular review was in fact completed, and will be used by the Commission staff and SRO staff during an examination of the broker or dealer for compliance with the Rule. The requirement that the Chief Executive Officer (or equivalent officer) of the broker or dealer, on an annual basis, certify that such risk management controls and supervisory procedures comply with Rule 15c3–5, that the annual review was conducted, and that such certifications be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act will help to ensure that senior management review the efficacy of its controls and procedures at regular intervals and that such review is documented. This certification will be used internally by the broker or dealer as evidence that it complied with the Rule and possibly for internal compliance audit purposes. The certification also will be used by Commission staff and SRO staff during an examination of the broker or dealer for compliance with the Rule or more generally with regard to evaluation of a broker or dealer's risk management control procedures and controls.

C. Respondents

In the Proposing Release, the Commission estimated that the "collection of information" associated with the Rule would apply to approximately 1,295 brokers-dealers

[190] *See, e.g.,* Pershing Letter at 4; Fortis Letter at 9; STANY Letter at 4; Lek Letter at 3.

[191] *See supra* note 23.

[192] *Id.*

[193] *See supra* note 25.

[194] *Id.*

that have market access or provide a customer or any other person with market access. Of these 1,295 brokers-dealers, the Commission estimated that there are 1,095 brokers-dealers that are members of an exchange. This estimate was based on broker-dealer responses to FOCUS report filings with the Commission from 2007 and 2008. The Commission estimated that the remaining 200 broker-dealers are subscribers to ATSs but are not exchange members. This estimate was based on a sampling of subscriber information contained in Exhibit A to Form ATS–R filed with the Commission.

The Commission continues to estimate that there are 1,095 brokers-dealers that are members of an exchange, and that there are an additional 200 broker-dealers that are subscribers to ATSs but are not exchange members. However, the Commission is revising its initial estimate of the total number of respondents in a different respect. As stated above, the Commission is well aware that the same regulatory and financial risks are present when a non-broker-dealer subscriber directly accesses an ATS as when a broker-dealer accesses an exchange or ATS. Accordingly, the Commission believes that a broker-dealer operator of an ATS should be required to implement the financial and regulatory risk management controls required by the rule with regard to non-broker-dealer subscriber's access to its ATS. The Commission notes that currently there are approximately 80 ATSs that are registered with the Commission and provide market access, and the broker-dealer operators of these ATSs should be included among the respondents. This number is based on the number of ATSs that have filed an initial operation report ("Form ATS") with the Commission and also currently submit quarterly reports of alternative trading system activities ("Form ATS–R").

With the 80 additional respondents, the Commission now estimates that the "collection of information" associated with the Rule will apply to approximately 1,375 brokers-dealers that have market access or provide a customer or any other person with market access.

In the Proposing Release, the Commission solicited comments on the estimated number of respondents. Several commenters stated that the Commission's estimate does not take into account how the Rule's enactment will subsequently change the number of registered brokers-dealers that provide market access. For example, one commenter believed that the number of registered broker-dealers would increase, because some algorithmic trading firms would need to register as broker-dealers in order to continue to implement their current trading strategies in the face of increased latency times.[195] On the other hand, various commenters asserted that the Rule will prevent small broker-dealers from using sponsored access as a means to aggregate trading volume, obtain tiered pricing from exchanges, and remain competitive with larger liquidity providers, and therefore will drive smaller liquidity providers from the market.[196] If true, this will potentially reduce the number of registered broker-dealers that provide market access.

In addition to making an adjustment in the number of respondents to account for broker-dealer ATS operators that provide market access to non-broker-dealers, as described above, the Commission acknowledges that the implementation of the Rule may introduce competitive effects that lead to a change in the number of registered brokers-dealers with market access. However, the Commission notes that of the two speculative outcomes noted by commenters above, both caused by increased latency times, one would increase the number of registered broker-dealers, while the other would decrease the number. Although the Commission should anticipate either or both of these trends occurring, it is difficult to speculate which trend would predominate, if one does indeed take precedence over the other. The Commission ultimately believes that although the Rule may lead to short-term increases or decreases in the number of registered broker-dealers, such increases and decreases may offset each other over the longer term. Because of this, the Commission continues to believe that 1,375 brokers-dealers that have market access or provide a customer or any other person with market access is an appropriate estimate of the number of entities that will be subject to the rule for the current PRA analysis.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

For the purposes of the PRA analysis, the Commission considered the burden on respondents to bring their risk management controls and supervisory procedures into compliance with the Rule. The Commission continues to note that among brokers-dealers with market access, there is currently no uniform standard for risk management controls and supervisory procedures. The extent to which a respondent will be burdened by the proposed collection of information under the Rule will depend significantly on the financial and regulatory risk management controls that already exist in the respondent's system as well as the respondent's business model. As stated in the Proposing Release, the Commission believes that in many cases, particularly with respect to proprietary trading, more traditional agency brokerage activities, and direct market access, the Rule may be substantially satisfied by a respondent's existing financial and regulatory risk management controls and current supervisory procedures. As noted in the Proposing Release, these brokers-dealers likely will only require limited updates to their systems to meet the requisite risk management controls specified in the Rule, and as such, will incur minimal additional reporting and recordkeeping burdens.

The Commission continues to believe that the majority of respondents have risk management systems with pre-trade financial and regulatory controls, although the use and range of those controls may vary among firms. As noted in the Proposing Release, certain pre-trade controls, such as pre-set trading limits or filters to prevent erroneous trades, may already be in place within a respondent's risk management system. Similarly, the extent to which receipt of immediate post-trade execution reports creates a burden on respondents would depend on whether a respondent already receives such reports on an immediate, post-trade basis or on an end-of-day basis. For broker-dealers that rely largely on "unfiltered" or "naked" access, the Rule could require the development or significant upgrade of a new risk management system, which would be a significantly larger burden on a potential respondent. Therefore, the burden imposed by the Rule will differ vastly depending on a broker-dealer's current risk management system and business model.

Rule 15c3–5 will also require a respondent to update its review and compliance procedures to comply with the Rule's requirement to regularly review its risk management controls and supervisory procedures, including a certification annually by the Chief Executive Officer (or equivalent officer). The Commission notes that a respondent should currently have written compliance procedures reasonably designed to review its

[195] *See* ABA Letter at 6–7.

[196] *See id.* at 7, Jane Street Letter at 2.

business activity.[197] Rule 15c3–5 will initially require a respondent to update its written compliance procedures to document the method in which the respondent plans to comply with the Rule.

1. Technology Development and Maintenance

In the Proposing Release, the Commission estimated that the initial burden for a potential respondent to comply with the proposed requirement to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures, on average, would be 150 hours if performed in-house,[198] or approximately $35,000 if outsourced.[199] This figure was a weighted estimate based on the estimated number of hours for initial internal development and implementation by a respondent to program its system to add the controls needed to comply with the requirements of the proposed rule, expand system capacity, if necessary, and establish the ability to receive immediate post-trade execution reports. Based on discussion with various industry participants, the Commission expected that brokers-dealers with market access currently have the means to receive post-trade executions reports, at a minimum, on an end-of-day basis.

The Commission noted in the Proposing Release that if the broker-dealer decides to forego internal technology development and instead opts to purchase technology from a third-party technology provider or service bureau, the technology costs would also depend on the risk management controls that are already in place, as well as the business model of the broker or dealer. Based on discussions with various industry participants, the Commission noted that technology for risk management controls is generally purchased on a monthly basis. In the Proposing Release, the Commission's staff estimated that the cost to purchase technology from a third-party technology provider or service bureau would be approximately $3,000 per month for a single connection to a trading venue, plus an additional $1,000 per month for each additional connection to that exchange. For an estimate of the annual outsourcing cost, the Commission noted that for two connections to each of two different trading venues, the annual cost would be $96,000.[200] The potential range of costs would vary considerably, depending upon the business model of the broker-dealer.

Moreover, the Commission noted that on an ongoing basis, a respondent would have to maintain its risk management system by monitoring its effectiveness and updating its systems to address any issues detected. In addition, a respondent would be required to preserve a copy of its written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. The Commission estimated that the ongoing annualized burden for a potential respondent to maintain its risk management system would be approximately 115 burden hours if performed in-house,[201] or approximately $26,800 if outsourced.[202] The Commission believed the ongoing burden of complying with the proposed rule's collection of information would include, among other things, updating systems to address any issues detected, updating risk management controls to reflect any change in its business model, and documenting and preserving its written description of its risk management controls.

For hardware and software expenses, the Commission estimated that the average initial cost would be approximately $16,000 per broker-dealer,[203] while the average ongoing cost would be approximately $20,500 per broker-dealer.[204]

The Commission also considered how permitting broker-dealers to allocate regulatory risk management controls to customers that are registered broker-dealers would affect the Commission's calculations of total initial and annual reporting and recordkeeping burdens. Although commenters have noted that such market access arrangements consisting of multiple broker-dealers are commonplace,[205] establishing an estimate for the average additional technology burden is a challenging task. Numerous uncertainties, including the number of broker-dealers involved in any given transaction or contractual agreement, create difficulties in developing estimates.

After carefully evaluating the types of compliance responsibilities that could be allocated, the technological capabilities required, and the tasks associated with risk compliance allocation, the Commission determined

[197] *See supra* note 57.

[198] This estimate was based on discussions with various industry participants. Specifically, the modification and upgrading of hardware and software for a pre-existing risk control management system, with few substantial changes required, would take approximately two weeks, while the development of a risk control management system from scratch would take approximately three months.

Based on discussions with industry participants, the Commission estimated that a dedicated team of 1.5 people would be required for the system development. The team may include one or more programmer analysts, senior programmers, or senior systems analysts. Each team member would work approximately 20 days per month, or 8 hours × 20 days = 160 hours per month. Therefore, the total number of hours per month for one system development team would be 240 hours.

A two-week project to modify and upgrade a pre-existing risk control management system would require 240 hours/month × 0.5 months = 120 hours, while a three-month project to develop a risk control management system from scratch would require 240 hours/month × 3 months = 720 hours. Based on discussions with industry participants, the Commission estimated that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average number of burden hours for an initial internal development project would be approximately (0.95 × 120 hours) + (0.05 × 720 hours) = 150 hours.

[199] *See infra* note 227.

[200] 12 months × $4,000 (estimated monthly cost for two connections to a trading venue) × 2 trading venues = $96,000. This estimate was based on discussions with various industry participants. For purposes of this estimate, "connection" was defined as up to 1,000 messages per second inbound, regardless of the connection's actual capacity.

For the conservative estimate above, the Commission chose two connections to a trading venue, the number required to accommodate 1,500 to 2,000 messages per second. The estimated number of messages per second was based on discussions with various industry participants.

[201] Based on discussions with industry participants, the Commission estimated that a dedicated team of 1.5 people would be used for the ongoing maintenance of all technology systems. The team may include one or more programmer analysts, senior programmers, or senior systems analysts. In-house system staff size varies depending on, among other things, the business model of the broker or dealer. Each staff member would work 160 hours per month, or 12 months × 160 hours = 1,920 hours per year. A team of 1.5 people therefore would work 1,920 hours × 1.5 people = 2,880 hours per year. Based on discussions with industry participants, the Commission estimated that 4% of the team's total work time would be used for ongoing risk management maintenance. Accordingly, the total number of burden hours for this task, per year, is 0.04 × 2,880 hours = 115.2 hours.

[202] *See infra* note 228.

[203] Industry sources estimate that to build a risk control management system from scratch, hardware would cost $44,500 and software would cost $58,000, while to upgrade a pre-existing risk control management system, hardware would cost $5,000 and software would cost $6,517. Based on discussions with industry participants, the Commission estimates that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average hardware and software cost for an initial internal development project would be approximately (0.95 × $11,517) + (0.05 × $102,500) = $16,066, or $16,000.

[204] Industry sources estimate that for ongoing maintenance, hardware would cost $8,900 on average and software would cost $11,600 on average. The total average hardware and software cost for ongoing maintenance would be $8,900 + $11,600 = $20,500.

[205] *See supra* note 107.

that in estimating the additional initial and ongoing technology burdens, these considerations would not affect estimated burdens in a meaningful way. The Commission expects that any additional technology burdens that broker-dealers undertake to bring their sponsored broker-dealers "on board" will be offset by the sponsored broker-dealers' reduced technology burdens from using their sponsoring broker-dealers' risk management systems. While the Commission recognizes that the offsetting of technology burdens may not fully reflect all of the hours that broker-dealers may incur from preparing risk management systems for allocation, Commission staff believes that such an estimate is reasonable given the relatively small technology burdens that sponsored broker-dealers currently have as part of their status quo. The Commission is therefore retaining the hourly burden estimates and calculation methodology for technology development and maintenance as originally proposed.

In the Proposing Release, the Commission solicited comments on the burdens of technology development and maintenance. The Commission did not receive any comments that directly addressed the initial or ongoing burden for technology, as measured in hours, for a potential respondent to comply with the proposed requirement to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures.

However, two commenters did address the Commission's technology outsourcing cost estimates, asserting that they were too low. For example, one commenter believed that the Commission's initial and ongoing technology outsourcing cost estimates dramatically understated the actual costs that would be incurred, stating that maintenance from outside vendors would cost in excess of $1 million per year for services that include "fat finger," credit, and compliance controls.[206] Another commenter estimated that it will cost more than $2 million per year for a company to buy the appropriate systems.[207]

The Commission reiterates that technology outsourcing costs will vary depending on the size of the broker or dealer and the extent to which it already complies with the recordkeeping requirements described in the Rule. As stated above, Rule 15c3–5 does not employ a "one-size-fits-all" standard for determining compliance with the rule.[208] The Commission notes that its burden and outsourcing estimates are calculated as weighted averages, and that these estimates skew lower because the Commission estimates that, based on discussions with various industry participants, the majority of broker-dealers that provide market access, if they are not already fully compliant, are close to full compliance and are not expected to incur significant outsourcing costs. Numerous industry sources have stated that for many smaller brokers-dealers, third-party technology providers would take no longer than two or three days to program any compliance adjustments. While some respondents will indeed incur significantly higher technology outsourcing costs that would correspond to commenters' estimates, the Commission expects that these respondents will be significantly outnumbered by brokers-dealers who will incur minimal outsourcing costs. The Commission therefore continues to believe that its burden estimates for technology outsourcing are reasonable, and retains them as originally proposed.

2. Legal and Compliance

In the Proposing Release, the Commission provided a separate set of burden estimates for legal and compliance obligations. The Commission noted that the majority of broker-dealers should already have compliance policies and supervisory procedures in place.[209] Accordingly, the Commission asserted that the initial burden to comply with the proposed compliance requirements should not be substantial. Based on discussions with various industry participants and the Commission's prior experience with broker-dealers, the Commission estimated that the initial legal and compliance burden on average for a potential respondent to comply with the proposed requirement to establish, document, and maintain compliance policies and supervisory procedures would be approximately 35 hours. Specifically, the setting of credit and capital thresholds for each customer would require approximately 10 hours,[210] and the modification or establishment of applicable compliance policies and procedures would require approximately 25 hours,[211] which includes establishing written procedures for reviewing the overall effectiveness of the risk management controls and supervisory procedures.

On an ongoing basis, a respondent would have to maintain and review its risk management controls and supervisory procedures to assure their effectiveness as well as to address any deficiencies found. The broker-dealer would have to review, no less frequently than annually, its business activity in connection with market access to assure the overall effectiveness of the risk management controls and supervisory procedures and would be required to make changes to address any problems or deficiencies found through this review. Such review would be required to be conducted in accordance with written procedures and would be required to be documented. The broker-dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively. On an annual basis, the Chief Executive Officer (or equivalent officer) of the broker-dealer would be required to certify that such risk management controls and supervisory procedures comply with the proposed rule, that the broker or dealer conducted such review, and that such certifications are preserved by the broker-dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. The ongoing burden of complying with the proposed rule's collection of information would include documentation for compliance with its risk management controls and supervisory procedures, modification to procedures to address any deficiencies in such controls or procedures, and the required preservation of such records.

Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission estimated in the Proposing Release that a broker-dealer's implementation of an annual review, modification of its risk management controls and supervisory procedures to address any deficiencies, and preservation of such records would require 45 hours per year. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures would require an estimated 20 hours per year; a compliance manager who reviews, documents, and updates

[206] *See* ConvergEx Letter at 9.

[207] *See* Wedbush Letter at 5–6.

[208] *See supra* note 47.

[209] *See supra* note 57.

[210] The Commission estimated that one compliance attorney and one compliance manager would each require 5 hours, for a total initial burden of 10 hours.

[211] The Commission estimated that one compliance attorney and one compliance manager would each require 10 hours, and one Chief Executive Officer would require 5 hours, for a total initial burden of 25 hours.

written compliance policies and procedures was expected to require 20 hours per year; and the Chief Executive Officer, who certifies the policies and procedures, was expected to require another 5 hours per year.

Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission believed that the ongoing legal and compliance obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. The Commission did not believe that a broker-dealer would have any recurring external costs associated with legal and compliance obligations.

After considering the effects of permitting broker-dealers to enter contractual arrangements to allocate certain risk compliance responsibilities to a customer that is a registered broker-dealer, the Commission has decided to include additional hourly burden estimates for legal and compliance staff to enter into such written contracts with other broker-dealer customers. The Commission notes the difficulty of estimating an average hourly burden for contract negotiations and preparation, because (1) the total number of contractual arrangements could vary greatly from broker-dealer to broker-dealer, and (2) not all broker-dealers will enter into such risk compliance allocation arrangements. Based on current industry sources, the Commission expects that on both an initial and ongoing basis, compliance attorneys will spend an average of 10 hours negotiating and preparing such risk compliance allocation contracts, while compliance managers will require an average of 5 hours on these tasks. The Commission again notes that its estimates are calculated as weighted averages, and that these estimates skew lower because it anticipates that the number of broker-dealers that do not enter into such allocation arrangements will likely greatly exceed the number of broker-dealers that do, even taking into account broker-dealers who will enter into multiple allocation arrangements for one transaction.

In the Proposing Release, the Commission solicited comments regarding the information burden associated with a system for reviewing the effectiveness of risk management controls. Several commenters asserted that the requirement for CEO certifications was overly burdensome and unnecessary.[212] Many of the same commenters noted that in particular, the CEO certification was duplicative because FINRA members are already required by FINRA Rule 3130 to perform annual reviews of their supervisory systems and obtain a certification from the CEO.[213]

The Commission believes that this certification requirement is an integral component of the risk management controls and supervisory procedures contemplated by Rule 15c3–5, and should help assure their effectiveness. As noted in the Proposing Release, the Commission also believes that the CEO certification requirement should serve to bolster broker-dealer compliance programs, and promote meaningful and purposeful interaction between business and compliance personnel.[214] The Commission would expect, in many cases, the annual CEO certification required under Rule 15c3–5(e)(2) to be completed in conjunction with a firm's annual review and certification of its supervisory systems pursuant to FINRA Rule 3130. However, the CEO certification contemplated by the Rule is a separate and distinct certification from the FINRA 3130 certification or any other similar certification process.[215] That said, the Commission believes a FINRA member could combine in the same document the CEO certification required by Rule 15c3–5(e)(2) with the FINRA 3130 or other required certifications, so long as the substance of each of the required certifications is contained in that document.

One commenter disagreed with the Commission's finding that the ongoing legal and compliance obligations under the proposed rule would be handled internally, arguing that the CEO compliance certification requirement would likely require the hiring of a consultant to review controls because the Chief Executive is not likely to be a specialist in the area of risk management and the development of computerized controls.[216]

However, the Commission has in fact accounted for the likelihood that the Chief Executive Officer would not be a compliance specialist. In the Proposing Release, the Commission estimated that the initial legal and compliance burden for a CEO would constitute only 5 of the 35 total hours required,[217] on average, while internal compliance specialists would be responsible for the remainder of the initial burden.[218] Such a burden allocation anticipates that in practice, compliance experts will oversee the bulk of responsibilities for establishing credit and capital thresholds and for modifying compliance policies, while the Chief Executive Officer would retain the senior managerial responsibility to review the compliance experts' work and certify the controls' effectiveness. Moreover, the Commission reiterates that these compliance obligations are in fact consistent with the type of work that a broker-dealer typically handles internally, especially for other certification processes such as the FINRA 3130 process, as discussed above. The Commission is adopting Rule 15c3–5(e) as proposed, and with the exception of the additional compliance burden from negotiating and preparing risk compliance allocation agreements, is retaining its legal and compliance burden per-broker-dealer estimates as proposed.

3. Total Burden

Under the Rule, the total initial burden for all respondents will be approximately 275,000 hours ([150 hours (for technology) + 50 hours (for legal and compliance)] × 1,375 brokers and dealers = 275,000 hours) and the total ongoing annual burden would be approximately 240,625 hours ([115 hours (for technology) + 60 hours (for legal and compliance)] × 1,375 brokers and dealers = 240,625 hours). For hardware and software expenses, the total initial cost for all respondents will be $22,000,000 ($16,000 per broker-dealer × 1,375 brokers and dealers = $22,000,000) and the total ongoing annual cost for all respondents would be $28,187,500 ($20,500 per broker-dealer × 1,375 brokers and dealers = $28,187,500).The estimates of the initial and annual burdens are based on discussions with potential respondents. It should be noted that the total burden estimate has been increased from the Proposing Release's total burden estimate to reflect the revised number of respondents affected under the Rule.

IV. Consideration of Costs and Benefits

The Commission is sensitive to the costs and benefits that result from its rules. In the Proposing Release, the Commission identified certain costs and benefits of the Rule as proposed, and

[212] *See supra* note 180.

[213] *See* Engmann Letter at 2, Pershing Letter at 4, BIDS Letter at 4, ITG Letter at 9–10, Scottrade Letter at 1, Deutsche Letter at 6–7, ABA Letter at 5–6, SIFMA Letter at 9.

[214] *See* Proposing Release, 75 FR at 4015.

[215] The Commission also notes that Rule 15c3–5(e)(2) may apply to broker-dealers that are not FINRA members.

[216] *See* Lek Letter at 3.

[217] As stated above, the Commission now estimates that the total initial legal and compliance burden is 50 hours, and not 35.

[218] *See supra* notes 210–211.

requested comment on all aspects of the cost-benefit analysis, including the identification and assessment of any costs and benefits that were not discussed in the analysis. The Commission received several comments relating to the Commission's cost-benefit analysis. For the reasons discussed below, the Commission continues to believe that its estimates of the benefits and costs of Rule 15c3–5, as set forth in the Proposing Release, are appropriate.

A. Benefits

Rule 15c3–5 should benefit investors, broker-dealers, their counterparties, and the national market system as a whole by reducing the risks faced by broker-dealers and other market participants as a result of various market access arrangements by requiring financial and regulatory risk management controls to be implemented on a uniform, market-wide basis. The financial and regulatory risk management controls should reduce risks to broker-dealers and markets, as well as systemic risk associated with market access and enhance market integrity and investor protection in the securities markets by effectively prohibiting the practice of "unfiltered" or "naked" access to an exchange or ATS. The Rule will establish a uniform standard for a broker or dealer with market access with respect to risk management controls and procedures which should reduce the potential for regulatory arbitrage and lead to consistent interpretation and enforcement of applicable regulatory requirements across markets.

One of the benefits of the Rule should be the reduction of systemic risk associated with market access through the elimination of "unfiltered" or "naked" access. As discussed in the Proposing Release, due in large part to technological advancements, the U.S. markets have experienced a rise in the use and reliance of "sponsored access" arrangements where customers place orders that are routed to markets with little or no substantive intermediation by a broker-dealer. The risk of unmonitored trading is heightened with the increased prominence of high-speed, high-volume, automated algorithmic trading, where orders can be routed for execution in milliseconds. If a broker-dealer does not implement strong systematic controls, the broker or dealer may be unaware of customer trading activity that is occurring under its MPID or otherwise. In the "unfiltered" or "naked" access context, as well as with all market access generally, the Commission is concerned that order entry errors could suddenly and significantly make a broker-dealer and other market participants financially vulnerable within mere minutes or seconds. Real examples of such potential catastrophic events have already occurred. For instance, as discussed earlier, on September 30, 2008, trading in Google became extremely volatile toward the end of the day trading, dropping 93% in value at one point, due to an influx of erroneous orders onto an exchange from a single market participant which resulted in the cancellation of numerous trades.[219]

Without systematic risk protection, erroneous trades, whether resulting from manual errors or a faulty automated, high-speed algorithm, could potentially expose a broker or dealer to enormous financial burdens and disrupt the markets. Because the impact of such errors may be most profound in the "unfiltered" access context, but are not unique to it, it is clearly in a broker or dealer's financial interest, and the interest of the U.S. markets as a whole, to be shielded from such a scenario regardless of the form of market access. The mitigation of significant systemic risks should help ensure the integrity of the U.S. markets and provide the investing public with greater confidence that intentional, bona fide transactions are being executed across the national market system. Rule 15c3–5 should promote investor confidence as well as participation in the market by enhancing the fair and efficient operation of the U.S. securities markets. Among other things, the requirements of Rule 15c3–5 should promote fairness by establishing a level playing field for broker-dealers that provide access to trading on an exchange or ATS and help to ensure compliance with applicable regulatory requirements.

The national market system is currently exposed to risk that can result from unmonitored order flow, as a recent report has estimated that "naked" access accounts for 38 percent of the daily volume for equities traded in the U.S. markets.[220] The Commission is aware that a certain segment of the broker-dealer community has declined to incorporate "naked" access arrangements into their business models because of the inherent risks of the practice. In the absence of a Commission rule that would prohibit such market access, these brokers or dealers could be compelled by competitive and economic pressures to offer "naked" access to their customers and thereby significantly increase a systemic vulnerability of the national market system.

The Commission sought comment on the benefits associated with the Proposed Rule. Most of the 47 comment letters expressed, to varying degrees, general agreement with the Rule's intent to decrease the potential for financial, regulatory, and systemic risks from sponsored access arrangements.[221]

B. Costs

The Commission also requested comment on the costs associated with the Rule. As already stated in the PRA section above, several commenters believed that the Commission did not take into account either the increase in trading costs to clients of exchange members, or the decrease in available liquidity in the market.[222] For example, one commenter asserted that the Rule is too far-reaching in its scope, because it addresses types of market access that do not pose significant risks, and will create duplicative, unnecessary and costly regulation in areas where additional regulation is unneeded.[223] Another commenter believed that the Rule will impose significant costs on some entities beyond just brokers and dealers that provide market access.[224] The commenter noted that the Rule's effect would be to increase latency times and decrease liquidity in the market as a whole.[225] Other commenters anticipated that the Rule will create new costs for broker-dealers, who will then be forced to pass these costs along to end-clients in the form of increased transaction costs.[226]

The Commission recognizes that, by requiring all orders to be subject to regulatory and financial risk controls, Rule 15c3–5 will likely impose market costs related to increased latency times, reduced liquidity, and increased trading costs for broker-dealers. The

[219] *See* Google Trading Incident, *supra* note 16. *See also* SWS Trading Incident and Rambus Trading Incident, *supra* note 16.

[220] *See supra* note 13.

[221] *See* Woodbine Letter at 1; Lek Letter at 1; Engmann Letter at 1; BATS Letter at 1; Pershing Letter at 1; Fortis Letter at 1; FINRA Letter at 1; Nasdaq Letter at 1; BIDS Letter at 1; FRB Chicago Letter at 1; STANY Letter at 1; MFA Letter at 1; NYSE Letter at 1; ICI Letter at 1; Penson Letter at 1; Lime Letter at 1; ITG Letter at 2; Jane Street Letter at 1; EWT Letter at 1; FTEN Letter at 1; Goldman Letter at 1; Scottrade Letter at 1; Deutsche Letter at 1; Wedbush Letter at 1; GETCO Letter at 2; ABA Letter at 1; SIFMA Letter at 2; Carter Letter at 2; JP Morgan Letter at 1; Newedge Letter at 1; FIA Letter at 3; letter to Elizabeth M. Murphy, Secretary, Commission, from Kevin Cuttica, Chief Executive Officer, and David T. DeArmey, Chief Operating Officer, Sun Trading LLC, March 26, 2010 ("Sun Letter") at 1.

[222] *See* Fortis Letter at 14–15, STANY Letter at 5–6, Jane Street Letter at 2, Scottrade Letter at 1.

[223] *See* STANY Letter at 6.

[224] *See* ABA Letter at 6.

[225] *See* ABA Letter at 6–7.

[226] *See* Carter Letter at 5.

Commission recognizes that this could ultimately limit the algorithmic trading of some smaller proprietary trading firms, and potentially lower overall trading volume. To the extent that lowered trading volume leads to lower overall market liquidity, market participants may also incur additional costs due to lost trading opportunities and the possibility that smaller broker-dealers may not be able to aggregate trade flow and obtain favorable tiered pricing.

Although the Commission acknowledges these potential costs, it also recognizes the significant benefits that the Rule provides to the markets, such as the protection of market integrity and efficiency. Although the Rule may indeed impose costs resulting from increased latency times and reduced liquidity, the Commission believes that such costs are justified by the benefits provided in preventing unfiltered market access and enhancing investor protection. The Rule requirements are intended to minimize unnecessary and inefficient systemic risk from the markets.

Regarding the comments that the Rule would create duplicative, unnecessary and costly regulation, the Commission continues to believe that, in many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the Rule 15c3–5 may be substantially satisfied by existing risk management controls and supervisory procedures already implemented by broker-dealers. For these broker-dealers, Rule 15c3–5 should have a minimal impact on current business practices and, therefore, should not impose significant additional costs on these broker-dealers. Moreover, the Commission reiterates that the Rule does not require, and was never intended to require, multiple or duplicative layers of pre-trade controls for a single order. As stated in the Proposing Release, the Commission intends these controls and procedures to encompass existing regulatory requirements applicable to broker-dealers in connection with market access, and not to substantively expand upon them.

1. Technology Development and Maintenance

As described in the Proposing Release, broker-dealers with market access may comply with the Rule in several ways. A broker-dealer may choose to internally develop risk management controls from scratch, or upgrade its existing systems; each of these approaches has potential costs that are divided into initial costs and annual ongoing costs. Alternatively, a broker-dealer may choose to purchase a risk management solution from an outside vendor. As stated above, it is likely that many broker-dealers with market access would be able to substantially satisfy the Rule with their current risk management controls and supervisory procedures, requiring few material changes. However, for others, the costs of upgrading and introducing the required systems would vary considerably based on their current controls and procedures, as well as their particular business models. For instance, the needs of a broker-dealer would vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the sophistication of its client base, the types of trading strategies that it utilizes, the number of trading venues it connects to, the number of connections that it has to each trading market, and the volume and speed of its trading activity.

Commission staff's discussions with industry participants found that broker-dealers who must develop or substantially upgrade existing systems could face several months of work requiring considerable time and effort. For example, in the Proposing Release, the Commission estimated that developing a system from scratch could take approximately three months, while upgrading a pre-existing risk control management system could take approximately two weeks. In the Proposing Release, Commission staff estimated that the initial cost for an internal development team to develop or substantially upgrade an existing risk control system would be $51,000 per broker-dealer,[227] or $66.0 million for 1,295 broker-dealers. The Commission further estimated that the total annual ongoing cost to maintain an in-house risk control management system is $47,300 per broker-dealer,[228] or $61.3 million for 1,295 broker-dealers.

For this Adopting Release, the Commission is updating the total annual initial and ongoing technology costs to reflect the revised number of respondents, which has been changed from 1,295 to 1,375 broker-dealers.[229] The Commission's per-broker-dealer cost estimates of $51,000 for initial costs and $47,000 for annual ongoing costs remain the same. Commission staff now estimates that the total initial cost for internal development teams to develop or substantially upgrade existing risk control systems would be approximately $70.1 million for 1,375 broker-dealers, while the total ongoing annual cost to maintain in-house risk control management systems would be

[227] *See supra* note 199. The Commission estimated that the average initial cost of $51,000 per broker-dealer consists of $35,000 for technology personnel and $16,000 for hardware and software. As stated in the PRA section, industry sources estimated that the average system development team consists of one or more programmer analysts, senior programmers, and senior systems analysts. The Commission estimated that the programmer analyst would work 40% of the total hours required for initial development, or 150 hours × 0.40 = 60 hours; the senior programmer would work 20% of the total hours, or 150 hours × 0.20 = 30 hours; and the senior systems analyst would work 40% of the total hours, or 150 hours × 0.40 = 60 hours. The total initial development cost for staff was estimated to be 60 hours × $193 (hourly wage for a programmer analyst) + 30 hours × $292 (hourly wage for a senior programmer) + 60 hours × $244 (hourly wage for a senior systems analyst) = $34,980, or $35,000.

The $193, $292, and $244 per hour estimates for a programmer analyst, senior programmer, and senior systems analyst, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The Commission estimated that the average initial hardware and software cost is $16,000 per broker-dealer. Industry sources estimated that to build a risk control management system from scratch, hardware would cost $44,500 and software would cost $58,000, while to upgrade a pre-existing risk control management system, hardware would cost $5,000 and software would cost $6,517. Based on discussions with industry participants, the Commission estimated that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average hardware and software cost for an initial internal development project would be approximately (0.95 × $11,517) + (0.05 × $102,500) = $16,066, or $16,000.

[228] *See supra* note 202. The Commission estimated that the average annual ongoing cost of $47,300 per broker-dealer consists of $26,800 for technology personnel and $20,500 for hardware and software. The Commission estimated that the programmer analyst would work 40% of the total hours required for ongoing maintenance, or 115 hours × 0.40 = 46 hours; the senior programmer would work 20% of the total hours, or 115 hours × 0.20 = 23 hours; and the senior systems analyst would work 40% of the total hours, or 115 hours × 0.40 = 46 hours. The total ongoing maintenance cost for staff was estimated to be 46 hours × $193 (hourly wage for a programmer analyst) + 23 hours × $292 (hourly wage for a senior programmer) + 46 hours × $244 (hourly wage for a senior systems analyst) = $26,818, or $26,800.

The $193, $292, and $244 per hour estimates for a programmer analyst, senior programmer, and senior systems analyst, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The Commission estimated that the average annual ongoing hardware and software cost is $20,500 per broker-dealer. Industry sources estimated that for ongoing maintenance, hardware would cost $8,900 on average and software would cost $11,600 on average. The total average hardware and software cost for ongoing maintenance would be $8,900 + $11,600 = $20,500.

[229] *See supra* Section III.C.

approximately $65.0 million for 1,375 broker-dealers.

The Commission also considered how permitting broker-dealers to allocate risk compliance responsibilities to a customer that is a registered broker-dealer would affect the Commission's calculations of total initial and annual technology costs. As already noted above, the Commission determined that in estimating the additional initial and ongoing technology costs, these considerations would not affect estimated costs in a meaningful way. As concluded with the technology burdens, the Commission expects that any additional technology costs that broker-dealers accrue to add other broker-dealer transactions to their risk management systems will be justified by the sponsored broker-dealers' reduced technology costs from relying on other broker-dealers' risk management systems. Commission staff believes that such an assumption is reasonable given the relatively small technology burdens that sponsored broker-dealers currently have as part of their current risk compliance allocation arrangements.

As in the Proposing Release, we reiterate that the potential range of costs would vary considerably, depending upon the needs of the broker-dealer. Returning to the same example used in the Proposing Release, we provide an illustrative set of calculations for a scenario where 5% of respondents under the Rule need to build risk control management systems from scratch, while the other 95% only need to upgrade and modify their pre-existing risk control management systems.

If 69 broker-dealers—*i.e.,* 5% of the 1,375 broker-dealers affected under the rule—were to build risk control management systems from scratch, the total initial technology cost would be approximately $18.7 million. A team of 1.5 people, working full-time for 3 months, would work an estimated total of 720 burden hours on the project. The resulting personnel cost to build such a risk control management system would be approximately $167,904 per broker-dealer, or $11,585,380 for 69 broker-dealers. The hardware and software cost to build a risk control management system from scratch would be $102,500 per broker-dealer, or $7,072,500 for 69 broker-dealers. The combined personnel, hardware, and software cost would be $18.7 million.

By contrast, if the remaining 1,306 broker-dealers were to upgrade and modify their pre-existing risk control management systems, the total initial technology cost for those 1,306 broker-dealers would be approximately $51.6 million. A team of 1.5 people, working full-time for 2 weeks, would work an estimated total of 120 burden hours on the project. The resulting staff cost to upgrade and modify a pre-existing risk control management system would be approximately $27,984 per broker-dealer, or $36.5 million for 1,306 broker-dealers. The hardware and software cost to upgrade and modify a risk control management system would be $11,517 per broker-dealer, or $15.0 million for 1,306 broker-dealers. The combined personnel, hardware, and software cost would be $51.6 million.

Rather than developing or upgrading systems, broker-dealers may choose to purchase a risk management solution from a third-party vendor. Potential costs of contracting with such a vendor were obtained from industry participants. Here again, the potential range of costs would vary considerably, depending upon the needs of the broker-dealer. For instance, the needs of a broker-dealer would vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the sophistication of its client base, the types of trading strategies that it utilizes, the number of trading venues it connects to, the number of connections that it has to each trading market, and the volume and speed of its trading activity. As discussed previously, a broker-dealer is estimated to pay as much as approximately $4,000 per month per trading venue for a startup contract depending on its particular needs. In the Proposing Release, the Commission estimated $8,000 per month (*i.e.,* connection to two trading venues), or $96,000 annually, for a startup contract.[230] For instance, the Commission estimates that if 69 broker-dealers (or, 5% of respondents) choose to purchase systems from a third-party vendor as an alternative to building a risk control management system from scratch,[231] the cost to the industry for initial startup contracts could be approximately $6,240,000.[232] The Commission preliminarily believes that the annual ongoing cost would be significantly less than the initial startup cost; however, to be conservative, we estimate that the annual ongoing cost for 69 broker-dealers would be the same as the startup estimate of $6,624,000 per year.

The Commission requested comment on the technology cost estimates. Numerous commenters responded by asserting that the actual technology costs will be significantly higher than the estimates from the Proposing Release.[233] Of these, three commenters cited specific technology cost estimates of their own. One estimated that the cost to either build or buy the appropriate technology alone would be $500,000 to $1 million per year;[234] another asserted that maintenance from outside vendors would cost more than $1 million per year, while building a solution in-house would cost roughly $750,000;[235] and another stated that the cost to build the appropriate systems would be more than $2 million per year.[236]

The Commission recognizes that technology and maintenance costs will vary depending on the size of the broker or dealer and the extent to which it already complies with the requirements described in the Rule. The Commission notes that, like its initial estimates for technology outsourcing costs, its initial estimates for in-house technology and maintenance costs are weighted averages, and that these estimates skew lower because the Commission estimates that, based on discussions with various industry participants, the majority of broker-dealers that provide market access, if they are not already fully compliant, are close to full compliance and are not expected to incur significant additional technology costs. Numerous industry sources have stated that, for brokers-dealers who perform technology maintenance in-house, it would take no longer than two or three days to program any compliance adjustments. The Commission therefore continues to believe that its cost estimates for technology are reasonable, and retains its technology cost-per-broker-dealer estimates as proposed. However, the industry-wide technology cost estimate has been increased to reflect the revised number of respondents affected under the Rule.

2. Legal and Compliance

Under the Rule, a broker or dealer will be obligated to comply with all applicable regulatory requirements such as exchange trading rules relating to special order types, trading halts, odd-

[230] *See supra* Section III.D.1.

[231] As stated previously, the Commission estimates that 5% of all broker-dealers will require development of a system from scratch. *See supra* note 198. Based on discussions with various industry participants, the Commission believes that a total of 69 broker-dealers is a reasonable estimate here.

[232] 69 broker-dealers × $96,000 (annual cost for a startup contract with a third-party technology provider or service bureau) = $6,624,000.

[233] *See* Pershing Letter at 4, Fortis Letter at 18, STANY Letter at 4–5, Scottrade Letter at 1, Deutsche Letter at 6, Wedbush Letter at 5–6, ConvergEx Letter at 9, and CBOE Letter at 1, 4.

[234] *See* Pershing Letter at 4.

[235] *See* ConvergEx Letter at 9.

[236] *See* Wedbush Letter at 6.

lot orders, and SEC rules under Regulation SHO and Regulation NMS. Accordingly, the Commission believes that the overall cost increase associated with developing and maintaining compliance policies and procedures is not expected to be significant because the Rule may be substantially satisfied by existing risk management controls and supervisory procedures already implemented by brokers-dealer that conduct proprietary trading, traditional brokerage activities, direct market access, and sponsored access. Therefore, many of the financial and regulatory risk management controls specified in the Rule—such as prevention of trading restricted products, or setting of trade limits—should already be in place and should not require significant additional expenditure of resources.

In the Proposing Release, the Commission estimated that the initial cost for a broker-dealer to comply with the proposed requirement to establish, document, and maintain compliance policies and supervisory procedures would be approximately $28,200 per broker-dealer, or $36.5 million for 1,295 broker-dealers.[237] Specifically, the costs for setting credit and capital thresholds would be approximately $2,640,[238] and the modification or establishment of applicable compliance policies and procedures would be approximately $25,555 per broker-dealer.[239]

The Commission further estimated that the costs of the annual review, modification of applicable compliance policies and supervisory procedures, and preservation of such records would be approximately $30,800 per broker-dealer, or $39.9 million for 1,295 broker-dealers. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures would cost an estimated $5,400 per year;[240] a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to cost $5,160;[241] and the Chief Executive Officer, who certifies the policies and procedures, would cost $20,275.[242]

For this Adopting Release, the Commission is updating the total initial and ongoing legal and compliance costs to reflect the revised number of respondents, which has been changed from 1,295 to 1,375 broker-dealers.[243] Moreover, the Commission is revising its per-broker-dealer compliance cost estimates to account for the additional task of negotiating and preparing risk compliance allocation agreements. The Commission anticipates that compliance attorneys who prepare risk allocation agreements would cost an estimated $2,700 per year,[244] while compliance managers who participate in this process would cost an estimated $1,290 per year.[245] The Commission believes that the additional compliance costs for negotiating and preparing risk compliance allocation contracts will be the same for both initial and ongoing efforts.

Commission staff now estimates that the total initial cost for a broker-dealer to comply with the proposed requirement to establish, document, and maintain compliance policies and supervisory procedures would be approximately $32,200 per broker-dealer,[246] or $44.3 million for 1,375 broker-dealers. Meanwhile, the total annual ongoing cost to maintain in-house risk control management systems would be approximately $34,800 per broker-dealer,[247] or $47.9 million for 1,375 broker-dealers.

The Commission believed that the ongoing legal and compliance obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. The Commission did not believe that a broker-dealer would likely have any recurring external costs associated with legal and compliance obligations.

The Commission requested comment on the estimated costs of the legal and compliance obligations. One commenter asserted that the cost of compliance will exceed 10 to 20 times the amount projected by the Commission. The commenter noted that the cost of receiving and processing market data for hundreds of thousands of symbols (including options) alone will exceed the Commission's estimated compliance costs.[248] Moreover, the commenter believed that because it would be unlikely for a CEO to be a compliance specialist, a broker or dealer would more likely need to hire a consultant to

[237] The Commission has revised the number of respondents affected by the Rule. *See supra* Section III.C.

[238] The Commission estimated that one compliance attorney and one compliance manager would each require 5 hours, for a total initial burden of 10 hours. *See supra* Section III.B.2. The total initial cost for staff was estimated to be 5 hours × $270 (hourly wage for a compliance attorney) + 5 hours × $258 (hourly wage for a compliance manager) = $2,640.

The $270 and $258 per hour estimates for a compliance attorney and compliance manager, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[239] The Commission estimated that one compliance attorney and one compliance manager would each require 10 hours, while the Chief Executive Officer would require 5 hours, for a total initial burden of 25 hours. *See supra* Section III.B.2. The total initial cost for staff was estimated to be 10 hours × $270 (hourly wage for a compliance attorney) + 10 hours × $258 (hourly wage for a compliance manager) + 5 hours × $4,055 (hourly wage for a Chief Executive Officer) = $25,555.

The $270 and $258 per hour estimates for a compliance attorney and compliance manager, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $4,055 per hour figure for a broker-dealer Chief Executive Officer comes from the median of June 2008 Large Bank Executive Compensation data from TheCorporateLibrary.com, divided by 1800 hours per work-year. We invited comments on whether large bank Chief Executive Officer total compensation is an appropriate proxy for broker-dealer Chief Executive Officer total compensation, but received none.

[240] 20 hours (total annual ongoing compliance hourly burden for a compliance attorney) × $270 (hourly wage for a compliance attorney) = $5,400. The $270 per hour estimate for a compliance attorney is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[241] 20 hours (total annual ongoing compliance hourly burden for a compliance manager) × $258 (hourly wage for a compliance manager) = $5,160. The $258 per hour estimate for a compliance manager is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[242] 5 hours (total annual ongoing compliance hourly burden for a Chief Executive Officer) × $4,055 (hourly wage for a Chief Executive Officer) = $20,275. The $4,055 per hour figure for a broker-dealer Chief Executive Officer comes from the median of June 2008 Large Bank Executive Compensation data from TheCorporateLibrary.com, divided by 1800 hours per work-year. We invited comments on whether large bank Chief Executive Officer total compensation is an appropriate proxy for broker-dealer Chief Executive Officer total compensation, but received none.

[243] *See supra* Section III.C.

[244] 10 hours (allocation contracts hourly burden for a compliance attorney) × $270 (hourly wage for a compliance attorney) = $2,700. The $270 per hour estimate for a compliance attorney is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[245] 5 hours (allocation contracts hourly burden for a compliance manager) × $258 (hourly wage for a compliance manager) = $1,290. The $258 per hour estimate for a compliance manager is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[246] The new total initial compliance cost per broker-dealer is $28,200 (Proposing Release estimate) + $2,700 + $1,290 (additional costs for allocation contracts) = $32,190.

[247] The new total annual ongoing compliance cost per broker-dealer is $30,800 (Proposing Release estimate) + $2,700 + $1,290 (additional costs for allocation contracts) = $34,790.

[248] *See* Lek Letter at 3.

review the controls, which would likely cost between $500,000 and $1 million per year.[249]

The Commission continues to believe that the cost to develop and maintain compliance policies and procedures will not be significant for most brokers-dealers. The Commission stresses that its estimate of the compliance cost represents an average of the cost associated with all compliance requirements referenced in the Rule and, on balance, believes that overall costs are accounted for in the $32,200 initial cost and the $34,800 ongoing annual costs per broker-dealer. Moreover, similar to the technology costs, the compliance cost is a weighted average that skews lower because most brokers and dealers who already maintain compliance policies and procedures will not face significantly greater costs. Although several broker-dealers may indeed incur a cost of compliance that will exceed the amount estimated in the Proposing Release, the Commission anticipates that these broker-dealers will be significantly outnumbered by brokers-dealers who will incur minimal additional costs. With the exception of the additional costs to account for negotiating and preparing risk compliance allocation agreements, the Commission retains its compliance cost estimates as previously stated in the Proposing Release.

As already stated above, the Commission has in fact accounted for the likelihood that the Chief Executive Officer would not be a compliance specialist. In the Proposing Release, the Commission estimated that the initial legal and compliance burden for a CEO would constitute only 5 of the 35 total hours required,[250] on average, while internal compliance specialists would be responsible for the remainder of the initial burden. Such a burden allocation anticipates that compliance experts will oversee the bulk of responsibilities for establishing credit and capital thresholds and for modifying compliance policies, while the Chief Executive Officer would retain the senior managerial responsibility to review and certify the controls' effectiveness. Moreover, the Commission reiterates that these compliance obligations are in fact consistent with the type of work that a broker-dealer typically handles internally, especially since broker-dealers typically rely on internal resources for other certification processes such as the FINRA 3130 process, as discussed above. The Commission is adopting Rule 15c3–5(e) as proposed, and is largely retaining its legal and compliance burden per-broker-dealer estimates as proposed.

3. Total Cost

The Commission believes that this Rule would have its greatest impact on broker-dealers that provide "unfiltered" or "naked" access, and that the majority of broker-dealers with market access are likely to be able to substantially satisfy the requirements of the Rule with much of their current existing risk management controls and supervisory procedures. However, for broker-dealers that would need to develop or substantially upgrade their systems the cost would vary considerably.

We note that the potential range of costs would vary considerably, depending upon the needs of the broker-dealer and its current risk management controls and supervisory procedures. Once again, we provide an illustrative set of calculations for a scenario where 5% of respondents under the Rule need to build risk control management systems from scratch, while the other 95% only need to upgrade and modify their pre-existing risk control management systems.

The Commission estimates that if 69 broker-dealers build risk management systems from scratch and modify their compliance procedures accordingly, the total initial cost could be approximately as much as $20.9 million. The cost to build the risk control management systems would be $18.7 million for 69 broker-dealers,[251] while the cost to initially develop or modify compliance procedures for the same would be approximately $32,200 per broker-dealer,[252] or $2.2 million for 69 broker-dealers. The total initial cost to build systems from scratch is thus estimated to be approximately $20.9 million.

By contrast, the Commission estimates that if the remaining 1,306 broker-dealers would upgrade their pre-existing risk control management systems and modify their compliance procedures accordingly, the total initial cost would be approximately as much as $93.6 million. The cost to upgrade the risk control management systems would be $51.6 million for 1,306 broker-dealers,[253] while the cost to initially develop or modify compliance procedures for the same would be approximately $32,200 per broker-dealer,[254] or $42.1 million for 1,306 broker-dealers. The total initial cost is thus estimated to be approximately $93.6 million.

The total annual initial cost for all 1,375 broker-dealers is estimated to be approximately $114.4 million.[255]

The total annual ongoing cost for all 1,375 broker-dealers to maintain a risk management control system and annual review and modification of applicable compliance policies and procedures could be approximately as much as $112.9 million. The annual technology cost to maintain a risk management control system would be approximately $47,300 per broker-dealer,[256] or $65 million for 1,375 broker-dealers, while the cost for annual review and modification of applicable compliance policies and procedures would be approximately $34,800 per broker-dealer,[257] or $47.9 million for 1,375 broker-dealers. The total annual ongoing cost for all 1,375 broker-dealers is estimated to be approximately $112.9 million. It should be noted that the total cost estimate has been increased from the Proposing Release's total cost estimate to reflect the revised number of respondents affected under the Rule.

The Commission believes that in many cases broker-dealers whose business activities include proprietary trading, traditional agency brokerage activities, and direct market access, would find that their current risk management controls and supervisory procedures may substantially satisfy the requirements of the Rule, and require minimal material modifications. Such broker or dealers would experience the market-wide benefits of the proposal with limited additional costs related to their own compliance.

V. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[258] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the

[249] *Id.*

[250] As stated above, the Commission now estimates that the total initial legal and compliance burden is 50 hours, and not 35. *See supra* Section III.D.2.

[251] *See supra* Section IV.B.1.

[252] *See supra* Section IV.B.2.

[253] *See supra* Section IV.B.1.

[254] *See supra* Section IV.B.2.

[255] $20.9 million (initial cost for 69 broker-dealers building a system from scratch) + $93.6 million (initial cost for 1,306 broker-dealers upgrading pre-existing systems) = approximately $114.4 million.

[256] *See supra* note 228.

[257] *See supra* notes 240, 241, and 242.

[258] 15 U.S.C. 78c(f).

Exchange Act [259] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

A. Competition

In the Proposing Release, we considered in turn the impact of Proposed Rule 15c3–5 on the market center and broker-dealer industries. Information provided by market centers and broker-dealers in their registrations and filings with us and with FINRA informs our views on the structure of the markets in these industries. We begin our consideration of potential competitive impacts with observations of the current structure of these markets.

The broker-dealer industry, including market makers, is a highly competitive industry, with most trading activity concentrated among several dozen large participants and with thousands of small participants competing for niche or regional segments of the market.

There are approximately 5,178 registered broker-dealers, of which 890 are small broker-dealers.[260] The Commission estimates that 1,295 brokers or dealers would have market access as defined under the proposed rule.[261] In addition, the Commission estimates that 80 brokers or dealers operate registered, active ATSs, bringing the total estimate of broker-dealers that would be subject to the requirements of the rule to 1,375. Of these 1,375 brokers or dealers, the Commission estimates that approximately 21 of those are small broker-dealers. To limit costs and make business more viable, small broker-dealers often contract with larger broker-dealers to handle certain functions, such as clearing and execution, or to update their technology. Larger broker-dealers typically enjoy economies of scale over small broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and their customers.

Rule 15c3–5 is intended to address a broker-dealer's obligations generally with respect to market access risk management controls across markets, to prohibit the practice of "unfiltered" or "naked" access to an exchange or an ATS where customer order flow does not pass through the broker-dealer's systems or filters prior or to entry on an exchange or ATS, and to provide uniform standards that would be interpreted and enforced in a consistent manner. Such requirements may promote competition by establishing a level playing field for broker-dealers in market access, in that each broker or dealer would be subject to the same requirements in providing access.

The Rule will require brokers or dealers that offer market access, including those providing sponsored or direct market access to customers, to implement appropriate risk management controls and supervisory procedures to manage the financial and regulatory risks of this business activity. As noted above, we expect there to be costs of implementing and monitoring these systems. However, we do not believe that the costs overall will create or increase any burdens of entry into the broker-dealer industry.

The costs to implement appropriate risk management controls and supervisory procedures to manage the financial and regulatory risks may disproportionately impact small-or medium-sized broker-dealers. In particular, the costs of instituting such controls and procedures could be a larger portion of revenues for small- and medium-sized broker-dealers than for larger broker dealers. In addition, to the extent that the cost of obtaining sponsored access increases, the increases could be a larger portion of the revenues of small- and medium-sized broker-dealers. This could impair the ability of small- and medium-sized broker-dealers to compete for order routing business with larger firms, limiting choice and incentives for innovation in the broker dealer industry. However, the effect on smaller broker-dealers could be mitigated, to some extent, by purchasing a risk management solution from a third-party vendor.

The trading industry is a highly competitive one, characterized by ease of entry. In fact, the intensity of competition across trading platforms in this industry has increased dramatically in the past decade as a result of market reforms and technological advances. This increase in competition has resulted in substantial decreases in market concentration, effective competition for the securities exchanges, a proliferation of trading platforms competing for order flow, and significant decreases in trading fees. The low barriers to entry for equity trading venues are shown by new entities, primarily ATSs, continuing to enter the market. Currently, there are approximately 50 registered ATSs that trade equity securities. The Commission within the past few years has approved applications by BATS and Nasdaq to become registered as national securities exchanges for trading equities, and approved proposed rule changes by two existing exchanges—ISE and CBOE—to add equity trading facilities to their existing options business. Moreover, on March 12, 2010, Direct Edge received formal approval from the Commission for its platforms to operate as facilities to two newly created national securities exchanges. We believe that competition among trading centers has been facilitated by Rule 611 of Regulation NMS,[262] which encourages quote-based competition between trading centers; Rule 605 of Regulation NMS,[263] which empowers investors and broker-dealers to compare execution quality statistics across trading centers; and Rule 606 of Regulation NMS,[264] which enables customers to monitor order routing practices.

Market centers compete with each other in several ways. National exchanges compete to list securities; market centers compete to attract order flow to facilitate executions; and market centers compete to offer access to their markets to members or subscribers. In this last area of competition, one could argue that the ability to access a market through sponsored access or direct market access could substitute for becoming a member or subscriber. Of course, there are both benefits and responsibilities in being a member or subscriber that do not accrue directly to someone using sponsored access or direct market access. Nonetheless, to the extent that these forms of market access are substitutes for membership, an increase in the costs of sponsored access or direct market access may make a potential member more likely to decide to become a member or subscriber. At the same time, market centers may reduce the cost of access to members or subscribers in order to attract trading flow to their venue.

The Commission solicited comments regarding the effect of the Rule on competition among market centers and broker-dealers. A number of commenters argued that the Rule will lead to small liquidity providers being driven from the market and an increased concentration of firms providing market access, thus reducing the available

[259] 15 U.S.C. 78w(a)(2).

[260] These numbers are based on the Commission's staff review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

[261] Proposing Release, 75 FR at 4018.

[262] 17 CFR 242.611.

[263] 17 CFR 242.605.

[264] 17 CFR 242.606.

choice for end-clients.[265] Specifically, one commenter noted in particular that without sponsored access, smaller broker-dealers will be unable to compete with larger market participants because direct exchange connectivity and lower latency times are cost-prohibitive for smaller competitors.[266] Moreover, smaller broker-dealers rely on trade flow aggregation to reach the most favorable fee tiers and overcome the handicap of uncompetitive pricing.[267]

The Commission acknowledges that the Rule may indeed have adverse competitive effects on small broker-dealers. The Commission nevertheless places particular emphasis on the significant benefits that the Rule provides to the markets, such as the protection of market integrity and efficiency. Although the Rule may indeed lead to a consolidation among smaller brokers and dealers that would in turn potentially reduce competition among broker-dealers and increase trading costs for consumers, the Commission believes that such costs are justified by the benefits provided to investors, and the financial system as a whole, in preventing unfiltered market access. After careful consideration of the relevant facts and comments received, the Commission has determined that any burden on competition imposed by Rule 15c3–5 is necessary or appropriate in the furtherance of the purposes of the Exchange Act noted above.

B. Capital Formation

A purpose of Rule 15c3–5 is to strengthen investor confidence and, in doing so, to give investors greater incentive to participate in the markets, resulting in the promotion of capital formation. In deciding to adopt the Rule, the Commission has given significant consideration to the potential undermining of public confidence in the securities markets resulting from disorderly markets that could result from inadequate risk management controls and unfiltered sponsored access. The Commission believes that the mitigation of the risk of disorderly markets should help ensure the integrity of the U.S. markets and provide the investing public with greater confidence that intentional, bona fide transactions are being executed across the national market system. Rule 15c3–5 should promote confidence as well as participation in the market by enhancing the fair and efficient operation of the U.S. securities markets, thus promoting capital formation.

One commenter contended that the Rule's measures alone will likely have an insignificant effect on market integrity and protection of the public interest, as they are targeted towards systemic risk and not investor protection.[268] The Commission disagrees with the commenter's delineation between systemic risk and investor protection and the implicit assumption that the two are mutually exclusive. The Commission strongly believes that by helping to prevent unfiltered sponsored access, the Rule reduces the risk of disorderly markets. The Rule is expected to bolster investors' confidence that the markets are less likely to experience such unpredictable events, thus increasing market participants' incentive to remain invested in the markets and bolstering capital formation.

C. Efficiency

By addressing broker-dealer obligations with respect to market access risk controls across markets, and by having the effect of prohibiting "unfiltered" or "naked" access, the Rule would provide uniform standards that would be interpreted and enforced in a consistent manner. Rule 15c3–5 would help to facilitate and maintain stability in the markets and help ensure that they function efficiently.

In recent years, the development and growth of automated electronic trading has allowed ever increasing volumes of securities transactions across the multitude of trading centers that constitute the U.S. national market system. The Commission believes that the risk management controls and procedures that brokers and dealers would be required to include as part of their compliance systems should help prevent erroneous and unintended trades from occurring and thereby contribute to market efficiency. For example, Rule 15c3–5 requires that a broker-dealer with market access implement pre-trade risk management controls that, among other things, prevent the entry of erroneous or duplicative orders. These types of pre-trade risk management controls should serve to limit the number of erroneous or unintended orders from entering an exchange or ATS, thereby limiting the occurrence of erroneous or unintended executions. The Commission believes that certainty of an execution is integral to the operations of an efficient market. By limiting the potential for erroneous executions, Rule 15c3–5 should serve to enhance market efficiency by minimizing the number of trades that are subsequently broken and enhance price efficiency by ensuring that publicly reported transaction prices are valid.

VI. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA"), in accordance with the provisions of the Regulatory Flexibility Act ("RFA"),[269] regarding Rule 15c3–5 under the Securities Exchange Act of 1934.

A. Need for Rule 15c3–5

Over the past decade, the proliferation of sophisticated, high-speed trading technology has changed the way broker-dealers trade for their accounts and as an agent for their customers. Current SRO rules and interpretations governing electronic access to markets have sought to address the risks of this activity. However, the Commission believes that more comprehensive standards that apply consistently across the markets are needed to effectively manage the financial, regulatory, and other risks, such as legal and operational risks, associated with market access.

The Commission notes that these risks are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or sponsored access arrangements. For this reason, new Rule 15c3–5 is drafted broadly to cover all forms of access to trading on an exchange or ATS provided directly by a broker-dealer. The Commission believes a broker-dealer with market access should assure the same basic types of controls are in place whenever it uses its special position as a member of an exchange, or subscriber to an ATS, to access those markets as well as when a broker-dealer operator of an ATS provides access to its ATS to a non-broker-dealer. The Commission, however, is particularly concerned about the quality of broker-dealer risk controls in sponsored access arrangements, where the customer order flow does not pass through the broker-dealer's systems prior to entry on an exchange or ATS.

B. Significant Issues Raised by Public Comment

In the Proposing Release, the Commission requested comment on

[265] *See* Fortis Letter at 16, Jane Street Letter at 2.

[266] *See* Jane Street Letter at 2.

[267] *Id.*

[268] *See* Fortis Letter at 14.

[269] 5 U.S.C. 604(a).

matters discussed in the IRFA.[270] While the Commission did receive comment letters that discussed the overall number of respondents that would be affected by the proposed new rule,[271] the Commission did not receive any comments that specifically addressed the number of small entities that would be affected.

Several commenters stated that the Rule would have an impact on smaller broker-dealers. The commenters noted that sponsored access is a competitive tool for small broker-dealers that serves to level the playing field between smaller and larger market participants.[272] By prohibiting unfiltered sponsored access, the Rule would prevent small broker-dealers from offering reduced latency times that larger entities are able to offer through direct exchange connectivity.[273] Moreover, some commenters believed that the Rule would hinder small broker-dealers from aggregating trade flow with others to reach more favorable fee tiers.[274] The commenters asserted that as a result, the new rule may have the unintended negative effect of driving small liquidity providers out of the market and reducing overall marketplace liquidity.[275]

Another commenter noted that for some smaller proprietary trading firms, the expanded risk management requirements in the Rule would make it impossible for their current business models to be successful. In particular, the commenter asserted that increased latency times required to send the firms' orders through a broker-dealer's risk management systems would render their trading algorithms ineffective. As a result, this type of business model would no longer be viable.[276]

The Commission recognizes that small broker-dealers are faced with significant competitive concerns from larger market participants, and that the new rule will eliminate speed advantages gained through unfiltered sponsored access. However, the Commission notes that all broker-dealers will be prohibited from offering unfiltered sponsored access, not just small broker-dealers. The Rule may affect the efficacy of market participant trading algorithms. However, the Commission continues to believe that the potentially negative competitive effects on small broker-dealers are justified by the benefits of eliminating the substantial market risks that sponsored access imposes on all market participants, regardless of their size. As the Commission previously stated in the Initial Regulatory Flexibility Analysis in the Proposal, only a small number of the broker-dealers would be classified as "small businesses."[277] Given the relative importance of safeguarding against the risk of disorderly markets, the competitive effects that the Rule may impose on that small number of respondents is appropriate.

C. Small Entities Subject to the Rule

For purposes of Commission rulemaking in connection with the RFA, a broker-dealer is a small business if its total capital (net worth plus subordinated liabilities) on the last day of its most recent fiscal year was $500,000 or less, and is not affiliated with any entity that is not a "small business."[278] The Commission staff estimates that at year-end 2008 there were 1,095 broker or dealers which were members of an exchange, and 21 of those were classified as "small businesses."[279] In addition, the Commission estimates that there were 200 brokers or dealers that were subscribers to ATSs but not members of an exchange.[280] The Commission estimates that, of those 200 brokers or dealers, only a small number would be classified as "small businesses."

Currently, most small brokers or dealers, when accessing an exchange or ATS in the ordinary course of their business, should already have risk management controls and supervisory procedures in place. The extent to which such small brokers or dealers would be affected economically under the Rule would depend significantly on the financial and regulatory risk management controls that already exist in the broker or dealer's system, as well as the nature of the broker or dealer's business. In many cases, the Rule may be substantially satisfied by a small broker-dealer's pre-existing financial and regulatory risk management controls and current supervisory procedures. Further, staff discussions with various industry participants indicated that very few, if any, small broker-dealers with market access provide other persons with "unfiltered" access, which may require more significant systems upgrades to comply with the Rule. Therefore, these brokers or dealers should only require limited updates to their systems to meet the requisite risk management controls and other requirements in the Rule. The Rule also would impact small brokers or dealers that utilize risk management technology provided by a vendor or some other third party; however, the proposed requirement to directly monitor the operation of the financial and regulatory risk management controls should not impose a significant cost or burden because the Commission understands that such technology allows the broker or dealer to exclusively manage such controls.[281]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The Rule will require brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. The financial and regulatory risk management controls and supervisory procedures required by the Rule must be under the direct and exclusive control of the broker or dealer with market access. The Rule, however, permits a broker-dealer providing market access to reasonably allocate, by written contract, control over specific regulatory risk management controls and supervisory procedures to a customer that is a broker-dealer, so long as the broker-dealer providing market access has a reasonable basis for determining that such customer, based on its position in the transaction and relationship with an ultimate customer, has better access than the broker-dealer with market access to that ultimate customer and its trading information such that it can more effectively implement the specified controls or procedures than the broker-dealer providing market access. Each such broker or dealer will be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. Such regular review will be required to be conducted in accordance with written procedures and would be required to be

[270] *See* Proposing Release, 75 FR at 4028.

[271] *See supra* Section III.C.

[272] *See, e.g.,* Jane Street Letter at 1–2; Scottrade Letter at 1; Wedbush Letter at 3–4; ABA Letter at 6–7; and Carter Letter at 4–5.

[273] *See* Jane Street Letter at 1–2; Wedbush Letter at 3–4; Carter Letter at 4–5.

[274] *See* Jane Street Letter at 1–2.

[275] *See* Jane Street Letter at 1–2; Scottrade Letter at 1.

[276] *See* ABA Letter at 7.

[277] *See* Proposing Release, 75 FR at 4027.

[278] 17 CFR 240.0–10(c).

[279] *See* Proposing Release, 75 FR at 4027.

[280] *Id.*

[281] The Commission's understanding is based on discussions with various industry participants.

documented. The broker or dealer will be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) will be required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the proposed rule, and that the broker-dealer conducted such review. Such certifications will be required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. Most small brokers or dealers currently should already have supervisory procedures and record retention systems in place. The Rule will require small brokers or dealers to update their procedures and perform additional internal compliance functions. Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission estimates that implementation of a regular review, modification of applicable compliance policies and procedures, and preservation of such records would require, on average, 60 hours of compliance staff time for brokers or dealers depending on their business model.[282] The Commission believes that the business models of small brokers or dealers would necessitate less than the average of 60 hours.

E. Agency Action To Minimize Effects on Small Entities

Pursuant to Section 3(a) of the Regulatory Flexibility Act,[283] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or recording requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and 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 of the rule, for small entities.

The Commission considered whether it would be necessary or appropriate to establish different compliance or reporting requirements or timetables; or to clarify, consolidate, or simplify compliance and reporting requirements under the Rule for small entities. Because the Rule is designed to mitigate, as discussed in detail throughout this release, significant financial and regulatory risks, the Commission believes that small entities should be covered by the Rule. The proposed rule includes performance standards. The Commission also believes that the Rule is flexible enough for small broker-dealers to comply with the Rule without the need for the establishment of differing compliance or reporting requirements for small entities, or exempting them from the Rule's requirements.

VII. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 11A, 15, 17(a) and (b), and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78k–1, 78o, 78q(a) and (b), and 78w(a), the Commission adopts Rule 15c3–5 under the Exchange Act that would require broker-dealers with market access, or that provide a customer or any other person with market access through use of its market participant identifier or otherwise, to establish appropriate risk management controls and supervisory systems.

Text of Rule 15c3–5

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, 17 CFR part 240 is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.15c3–5 is added to read as follows:

§ 240.15c3–5 Risk management controls for brokers or dealers with market access.

(a) For the purpose of this section:

(1) The term *market access* shall mean:

(i) Access to trading in securities on an exchange or alternative trading system as a result of being a member or subscriber of the exchange or alternative trading system, respectively; or

(ii) Access to trading in securities on an alternative trading system provided by a broker-dealer operator of an alternative trading system to a non-broker-dealer.

(2) The term *regulatory requirements* shall mean all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.

(b) A broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Such broker or dealer shall preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with § 240.17a–4(e)(7). A broker-dealer that routes orders on behalf of an exchange or alternative trading system for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS (§ 242.611) for NMS stocks, or in compliance with a national market system plan for listed options, shall not be required to comply with this rule with regard to such routing services, except with regard to paragraph (c)(1)(ii) of this section.

(c) The risk management controls and supervisory procedures required by paragraph (b) of this section shall include the following elements:

(1) *Financial risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, including being reasonably designed to:

(i) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and

(ii) Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

[282] *See supra* Section III.D.2.

[283] 5 U.S.C. 603(c).

(2) *Regulatory risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to:

(i) Prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) Prevent the entry of orders for securities for a broker or dealer, customer, or other person if such person is restricted from trading those securities;

(iii) Restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker or dealer; and

(iv) Assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

(d) The financial and regulatory risk management controls and supervisory procedures described in paragraph (c) of this section shall be under the direct and exclusive control of the broker or dealer that is subject to paragraph (b) of this section.

(1) Notwithstanding the foregoing, a broker or dealer that is subject to paragraph (b) of this section may reasonably allocate, by written contract, after a thorough due diligence review, control over specific regulatory risk management controls and supervisory procedures described in paragraph (c)(2) of this section to a customer that is a registered broker or dealer, provided that such broker or dealer subject to paragraph (b) of this section has a reasonable basis for determining that such customer, based on its position in the transaction and relationship with an ultimate customer, has better access than the broker or dealer to that ultimate customer and its trading information such that it can more effectively implement the specified controls or procedures.

(2) Any allocation of control pursuant to paragraph (d)(1) of this section shall not relieve a broker or dealer that is subject to paragraph (b) of this section from any obligation under this section, including the overall responsibility to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access.

(e) A broker or dealer that is subject to paragraph (b) of this section shall establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by paragraphs (b) and (c) of this section and for promptly addressing any issues.

(1) Among other things, the broker or dealer shall review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. Such review shall be conducted in accordance with written procedures and shall be documented. The broker or dealer shall preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with § 240.17a–4(e)(7) and § 240.17a–4(b), respectively.

(2) The Chief Executive Officer (or equivalent officer) of the broker or dealer shall, on an annual basis, certify that such risk management controls and supervisory procedures comply with paragraphs (b) and (c) of this section, and that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books and records in a manner consistent with § 240.17a–4(b).

(f) The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer, if the Commission determines that such exemption is necessary or appropriate in the public interest consistent with the protection of investors.

By the Commission.

Dated: November 3, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–28303 Filed 11–12–10; 8:45 am]

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Federal Register

Monday,
November 15, 2010

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 41

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[No. PTO–P–2009–0021]

RIN 0651–AC37

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) proposes changes to rules governing practice before the Board of Patent Appeals and Interferences (Board or BPAI) in *ex parte* patent appeals. After considering public comments raised in response to an Advanced Notice of Proposed Rulemaking, which proposed potential modifications to the stayed final rule, the Office is proposing to rescind the stayed final rule and is issuing this notice seeking public comment on proposed new revisions to the current rule. The goal of this proposed rulemaking is to simplify the appellate process in a manner that effects an overall lessening of the burden on appellants and examiners to present an appeal to the Board.

DATES: The deadline for receipt of written comments on the proposed rulemaking is 5 p.m. Eastern Standard Time on January 14, 2011.

ADDRESSES: Written comments on the proposed rulemaking should be sent by electronic mail message over the Internet addressed to *BPAI.Rules@uspto.gov*. Comments on the proposed rulemaking may also be submitted by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of "Linda Horner, BPAI Rules." Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

FOR FURTHER INFORMATION CONTACT: Linda Horner, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797, or by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Linda Horner.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2007, the Office published a notice of proposed rulemaking governing practice before the Board in *ex parte* patent appeals (72 FR 41,472 (Jul. 30, 2007)). The notice was also published in the Official Gazette. 1321 Off. Gaz. Pat. Office 95 (Aug. 21, 2007). The public was invited to submit written comments. Comments were to be received on or before September 28, 2007.

On June 10, 2008, a final rulemaking was then published in the **Federal Register** (73 FR 32,938 (Jun. 10, 2008)). This final rule stated that the effective and applicability dates were December 10, 2008. On June 9, 2008, the Office published a 60-day **Federal Register** notice (73 FR 32,559 (Jun. 9, 2008)) requesting the Office of Management and Budget (OMB) establish a new information collection for BPAI items in the final rule and requesting public comment on the burden impact of the final rule under the provisions of the Paperwork Reduction Act (PRA). On October 8, 2008, the Office published a 30-day **Federal Register** notice (73 FR 58,943 (Oct. 8, 2008)) stating that the proposal for the collection of information under the final rule was being submitted to OMB and requesting that comments on the proposed information collection be submitted to OMB. Because the information collection process had not been completed by the original effective and applicability date of the final rule, the Office published a **Federal Register** notice (73 FR 74972 (Dec. 10, 2008)) notifying the public that the effective and applicability dates of the final rule was not December 10, 2008, and that the effective and applicability dates would be delayed until a subsequent notice.

On January 20, 2009, the Assistant to the President and Chief of Staff instructed agencies via a memorandum entitled, "Regulatory Review," (74 FR 4435 (Jan. 20, 2009)) to consider seeking comments for an additional 30 days on rules that were published in the **Federal Register** and had not yet become effective by January 20, 2009. On January 21, 2009, the Office of Management and Budget issued a memorandum entitled, "Implementation of Memorandum Concerning Regulatory Review," (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_memoranda_2009_pdf/m09-08.pdf*) which provided agencies further guidance on such rules that had not yet taken effect. For such rules, both memoranda stated that agencies should consider reopening the rulemaking process to review any significant concerns involving law or policy that have been raised.

On December 22, 2009, the Office published an Advance Notice of Proposed Rulemaking (ANPRM) proposing further modifications to the stayed final rule and seeking public comment via a public roundtable and written comment (74 FR 67,987 (Dec. 22, 2009)).

Request for Comments

In light of the comments received to these notices, the Office is now proposing to rescind the stayed final rule and is proposing new changes to the current rules of practice before the Board in *ex parte* appeals, and is publishing this Notice of Proposed Rulemaking (NPRM) to solicit input from interested members of the public on the proposed new changes to the current rule.

Purposes for Proposed Changes to the Current Rule

The USPTO proposes to amend the rules of practice in *ex parte* patent appeals to avoid undue burden on appellants or examiners to provide information from the record to the Board, to eliminate any gap in time from the end of briefing to the commencement of the Board's jurisdiction, to clarify and simplify petitions practice in appeals, and to reduce confusion as to which claims are on appeal. For example, the Office proposes to amend the rules to: (1) Remove several of the current briefing requirements for an appeal brief, (2) provide for the Board to take jurisdiction over the appeal earlier in the appeal process, (3) eliminate the Board's authority, absent the Director's approval, to remand an application to the examiner, (4) no longer require examiners to acknowledge receipt of reply briefs, (5) create specified procedures under which an appellant can seek review of an undesignated new ground of rejection in either an examiner's answer or in a Board decision, (6) provide that the Board will presume that the appeal is taken from the rejection of all claims under rejection unless cancelled by an applicant's amendment, and (7) clarify that, for purposes of the examiner's answer, any rejection that relies upon new evidence shall be designated as a new ground of rejection.

For clarity, this notice refers in places to the "current" Board rules. The current rules in effect are the current Board rules as published in 37 CFR 41.1 through 41.81 (2010).

One purpose of this proposed rulemaking is to ensure that the Board

has adequate information to decide *ex parte* appeals on the merits, while not unduly burdening appellants or examiners with unnecessary briefing requirements. In particular, the goal of this proposed rulemaking is to effect an overall lessening of the burden on appellants and examiners to present an appeal to the Board. For example, statements of the status of claims, the status of amendments, the grounds of rejection to be reviewed on appeal, and the claims appendix would no longer be required in the appeal brief (Proposed Bd.R. 41.37) or in the examiner's answer. Because this information is already available in the Image File Wrapper, it is unnecessary for appellants or examiners to provide this information to the Board. Moreover, by eliminating these briefing requirements, the Office expects to reduce the number of non-compliant appeal briefs and the number of examiners' answers returned to the examiner due to non-compliance, which are a significant cause of delays on appeal. *See* USPTO, *Top Eight Reasons Appeal Briefs are Non-Compliant, http://www.uspto.gov/ip/boards/bpai/procedures/top_8_reasons_appeal_brf_dec09.pdf.*

Another purpose of this proposed rulemaking is to eliminate any gap in time from the end of briefing to the commencement of the Board's jurisdiction, and to minimize the number of appeals that transfer back-and-forth between the Board and the examiner. For example, under the proposed rules, the Board would take jurisdiction upon the earlier of the filing of a reply brief or the expiration of the time in which to file a reply brief (Proposed Bd.R. 41.35(a)). Examiners would no longer be required to acknowledge receipt of the reply brief (Proposed Bd.R. 41.43 [removed]). The proposed rules also eliminate the Board's independent authority to remand an application to an examiner (Proposed Bd.R. 41.50(a)). Therefore, the Board would be required to decide the appeal on the merits, and only with the Director's approval may the Board remand an application back to the examiner (Proposed Bd.R. 41.35(c)).

The proposed rulemaking is also intended to clarify and simplify petitions practice on appeal. For example, except under limited circumstances, any information disclosure statement or petition filed while the Board possesses jurisdiction over the proceeding would be held in abeyance until the Board's jurisdiction ends (Proposed Bd.R. 41.35(d)). Also, in response to public comments, and based on a comprehensive survey of case law from the United States Court of Appeals for the Federal Circuit (Federal Circuit) and United States Court of Customs and Patent Appeals (CCPA), the Office will provide improved guidance in the Manual of Patent Examination Procedure (MPEP), discussed *infra,* as to what constitutes a new ground of rejection in an examiner's answer. The proposed rulemaking explicitly sets forth the procedure under which an appellant can seek review of the Office's failure to designate a new ground of rejection in either an examiner's answer (Proposed Bd.R. 41.40) or in a Board decision (Proposed Bd.R. 41.50(c)).

Another purpose of this proposed rulemaking is to reduce confusion as to which claims are on appeal. For example, under the proposed rules, the Board would presume that the appeal is taken from the rejection of all claims under rejection unless cancelled by an applicant's amendment (Proposed Bd.R. 41.31(c)). This change would simplify practice for the majority of appellants who seek review of all claims under rejection by obviating the need to enumerate the rejected claims that are being appealed. This proposed rule would avoid the unintended cancellation of claims by the Office due to appellant's mistake in the listing of the claims in either the notice of appeal or in the appeal brief. Under current practice, if an appellant incorrectly lists the claims on appeal, or is silent in the brief as to some of the claims under rejection, then the Office assumes that such claims are not on appeal, and notes that those non-appealed claims should be cancelled by the examiner. *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) (holding that when appellant does not appeal some of the claims under rejection and does not challenge the Examiner's rejection of these claims, then the Board will treat these claims as withdrawn from the appeal, which operates as an authorization for the Examiner to cancel those claims from the application). The Office is proposing to change this practice in order to avoid the unintended cancellation of claims due to oversight or mistake by appellants in listing the claims on appeal. This proposed change would replace the Office's procedure under *Ghuman* and simplify practice for examiners by no longer requiring examiners to cancel non-appealed claims.

The **SUPPLEMENTARY INFORMATION** in this notice provides: (1) A brief explanation of the proposed changes to the current rule, (2) a discussion of the differences between the proposed rule and the current rule, and (3) a copy of the proposed amendments to the regulatory text.

Brief Explanation of Proposed Changes to the Current Rule

The notable changes in the proposed rule, as compared to the current Board rule, are: (1) The Board would presume that an appeal is taken from the rejection of all claims under rejection unless cancelled by an amendment filed by appellant (Proposed Bd.R. 41.31(c)); (2) the Board would take jurisdiction upon the filing of a reply brief or the expiration of time in which to file such a reply brief, whichever is earlier (Proposed Bd.R. 41.35(a)); (3) the requirements to include statements of the status of claims and grounds of rejection to be reviewed on appeal and the requirements to include a claims appendix, an evidence appendix and a related proceedings appendix would be eliminated from the appeal brief (Proposed Bd.R. 41.37(c)); (4) the Board may apply default assumptions if a brief omits a statement of the real party-in-interest or a statement of related cases (Proposed Bd.R. 41.37(c)(1)(i) and (ii)); (5) for purposes of the examiner's answer, any rejection that relies upon new evidence shall be designated as a new ground of rejection (Proposed Bd.R. 41.39(a)(2)); (6) the appellant can await a decision on a petition seeking review of an examiner's failure to designate a rejection in the answer as a new ground of rejection prior to filing a reply brief (Proposed Bd.R. 41.40) and thereby avoid having to file a request for extension of time in which to file the reply brief; and (7) the examiner's response to a reply brief would be eliminated (Proposed Bd.R. 41.43 [removed]). A more detailed discussion of all of the proposed changes follows.

Discussion of Proposed Changes to the Current Rule

Explanation of Proposed Changes

Existing rules in Part 1 are denominated as "Rule x" in this supplementary information. A reference to Rule 1.136(a) is a reference to 37 CFR 1.136(a) (2010).

Existing rules in Part 11 are denominated as "Rule x" in this supplementary information. A reference to Rule 11.18(a) is a reference to 37 CFR 11.18(a) (2010).

Existing rules in Part 41 are denominated as "Bd.R. x" in this supplementary information. A reference to Bd.R. 41.3 is a reference to 37 CFR 41.3 (2010).

Proposed rules are denominated as "Proposed Bd.R. x" in this supplementary information.

The Board has jurisdiction to consider and decide *ex parte* appeals in patent applications (including reissue, design and plant patent applications) and *ex parte* reexamination proceedings.

The proposed rules do not propose to change any of the rules relating to *inter partes* reexamination appeals. Nor do the proposed rules propose to change any of the rules relating to contested cases.

For purposes of this notice of proposed rulemaking, some paragraphs that are proposed to be deleted are shown as "reserved." These "reserved" paragraphs will be deleted entirely in the final rule, and the remaining paragraphs in each section will be renumbered, as appropriate.

Discussion of Proposed Changes to Specific Rules

Part 1

Termination of Proceedings

Proposed Rule 1.197 proposes to revise the title of this section and to delete paragraph (a), the provision that sets forth when jurisdiction passes from the Board to the examiner after a decision has been issued by the Board. The operative language of this paragraph has been incorporated into Proposed Bd.R. 41.54, except that "transmittal of the file" has been omitted. Most patent application files are electronic files (Image File Wrapper files), not paper files. Accordingly, a paper file is no longer "transmitted" to the examiner. The changes to Proposed Rule 1.197 and Proposed Bd.R. 41.54 are intended to more accurately reflect the fact that files are handled electronically within the Office, and do not imply that there would be a change in the practice for passing jurisdiction back to the examiner after decision by the Board—the process would remain the same under the proposed rule.

The ANPRM did not propose any changes to this section. As such, no comments were received in connection with this section.

Part 41

Authority

The listing of authority for Part 41 would be revised to add references to 35 U.S.C. 132, 133, 306, and 315. Section 132 provides that the Director shall prescribe by regulations to provide for the continued examination of applications for patent at the request of the applicant. Section 133 states that upon failure of the applicant to prosecute the application within six months after any action therein, the application shall be regarded as abandoned. Section 306 establishes the patent owner's right to appeal in an *ex parte* reexamination proceeding. Section 315 establishes the right to appeal in an *inter partes* reexamination proceeding.

Subpart A

Citation of Authority

Proposed Bd.R. 41.12 proposes to delete from the current rule the requirements: (1) To cite to particular case law reporters, and (2) to include parallel citations to multiple reporter systems. The proposed rule indicates a Board preference for citations to certain reporters and for limited use of non-binding authority.

The ANPRM proposed to delete the requirement in Bd.R. 41.12 to use parallel citations. The Office received one comment that the changes to this section proposed in the ANPRM were unclear. Specifically, the comment questioned whether the proposed changes made certain citations mandatory or if the citations were a preference of the Board. The Office also received one comment stating that requiring reporter cites is burdensome on parties and does not provide any efficiency to the Board. This comment further noted that requiring the filing of a copy of authorities relied upon would be unduly burdensome.

This section of the proposed rule has been revised to eliminate the previously proposed requirement to cite to a particular case law reporter and the previous requirement to include parallel citations to multiple reporter systems. The requirement to include pinpoint citations, whenever a specific holding or portion of an authority is invoked, is maintained. Because Administrative Patent Judges have access to both the West Reporter System and the United States Patents Quarterly, it is unnecessary for appellants to cite to both reporters.

The proposed rule, as well as the current rule, states that appellants should provide a copy of an authority if the authority is not an authority of the Office and is not reproduced in the United States Reports or the West Reporter System. This provision is designed to ensure that a full record is before the Administrative Patent Judge to allow an efficient and timely decision to be made on the merits of the case.

Subpart B

Definitions

Proposed Bd.R. 41.30 proposes to add a definition of "Record" to the current rule so that, when subsequent sections of Subpart B refer to the "Record", it is clear what constitutes the official record on appeal. The proposed rule would state that the official record contains the items listed in the content listing of the image file wrapper, excluding papers that were denied entry. The proposed definition of "Record" includes the items listed in the content listing of the image file wrapper because, in some cases, physical items that form part of the official file are not able to be scanned into the image file wrapper and are maintained elsewhere, such as in an artifact file. Some examples of such items include original drawings in design patent applications and sequence listings. In such cases, the image file wrapper will include an entry in the contents listing that points to this artifact file.

The ANPRM proposed to amend Bd.R. 41.30 to add a definition of "Record" to mean "the official content of the file of an application or reexamination proceeding on appeal." The Office received only one comment to this proposed change in the ANPRM, which approved of the proposal.

This section of the proposed rule includes a slightly different, but clearer, definition of "Record" than that which was proposed in the ANPRM. In particular, the definition in Proposed Bd.R. 41.30 explicitly excludes any amendment, evidence, or other document that was denied entry. Because an examiner's refusal to enter an amendment, evidence, or other document is a petitionable matter that is not subject to review by the Board, the exclusion of such un-entered documents from the proposed definition of "Record" reflects the fact that the Board's review of patentability determinations is properly based on the record of all entered documents in the file.

Appeal to the Board

Proposed Bd.R. 41.31(a) proposes to revise the current rule to make clear that an appeal to the Board is taken by filing a notice of appeal. This proposed change is not intended to change the current practice of the Office. The Office currently requires appellants to file a notice of appeal in order to appeal an adverse decision of the examiner to the Board.

The ANPRM proposed to amend 41.31(a) to clarify that an appeal is taken to the Board by filing a notice of appeal. The Office received a comment that the changes proposed in the ANPRM, which would have deleted reference to the statutory conditions under which a right of appeal arises, lacked clarity. Specifically, the comment noted that it would promote efficiency to retain the specific statutory conditions for appeal

in the rules to provide clarity to appellants and practitioners who might read only the rules and not the underlying statutes. Proposed Bd.R. 41.31 proposes to keep the language of sections (a)(1), (a)(2), and (a)(3) found in the current rule, thus retaining the statutory conditions under which a right of appeal arises.

The Office received another comment that proposed eliminating the notice of appeal requirement altogether because it causes unnecessary delay in the appellate process. This suggestion is not adopted. The filing of the notice of appeal is an important procedural step of the larger prosecution process at the Office. For example, the filing of a notice of appeal triggers the appellant's ability to file a pre-appeal brief conference request.

The Office received a comment to the ANPRM requesting that the Office provide statistics on the Pre-Appeal Brief Conference program. For each full fiscal year (FY) since the Pre-Appeal Brief Conference program was launched, the following charts show: (1) The annual number of such requests, (2) the percent of notices of appeal that contain a request, (3) the outcomes of the conferences, and (4) a comparison of the outcomes of the Pre-Appeal Brief Conference to the Appeal Conference.

PRE-APPEAL BRIEF CONFERENCE EFFECTS: ACTIONS IN RESPONSE TO REQUEST FOR PRE-APPEAL BRIEF REVIEW

FY	Number of requests	Frequency of requests (percent)	Proceed to board (percent)	Prosecution reopened (percent)	All rejections withdrawn (percent)	Defective request (percent)
06	6,525	24	55	37	5	3
07	7,240	25	56	38	4	2
08	8,255	27	59	37	2	2
09	9,967	30	56	39	3	2
10	12,019	34	56	38	5	1

APPEAL CONFERENCE EFFECTS: ACTIONS IN RESPONSE TO APPEAL BRIEF

FY	Examiner's answer (percent)	Prosecution reopened (percent)	All rejections withdrawn (percent)	Other action (percent)
98	58	12	29	1
99	52	15	32	1
00	46	21	32	1
01	40	25	34	1
02	38	26	34	1
03	38	29	31	1
04	39	32	27	2
05	39	35	24	2
06	49	30	19	2
07	56	28	14	2
08	59	28	12	1
09	56	27	16	1
10	59	23	17	1

Proposed Bd.R. 41.31(b) proposes to revise the current rule to make clear that the signature requirements of Rules 1.33 and 11.18(a) do not apply to the notice of appeal. This proposed change updates paragraph (b) to add a reference to Rule 11.18(a) to avoid any conflict between the rules of practice in *ex parte* appeals and the rules governing practice by registered practitioners before the Office.

The ANPRM proposed to remove the provision that a notice of appeal need not be signed. One comment requested clarification as to why the ANPRM proposed to delete paragraph (b) of the current rule. The comment suggested removing this flexibility might lead to mistakes and more work for both the Office and appellants to correct such mistakes. In light of this comment, Proposed Bd.R. 41.31(b) would retain the provision that a notice of appeal need not be signed and would further clarify that Rule 11.18(a) does not apply to a notice of appeal, so as to avoid any conflict in the requirements for practitioners under this title.

Proposed Bd.R. 41.31(c) proposes to revise the current rule so that an appeal, when taken, would be presumed to seek review of all of the claims under rejection unless canceled by an amendment filed by the appellant. This proposed change, obviates the need for the majority of appellants who seek review of all claims under rejection to affirmatively state (in the notice of appeal and/or in the status of claims section of the appeal brief) which claims are on appeal. Rather, under Proposed Bd.R. 41.31(c), the Board would presume that an appellant intends to appeal all claims under rejection except for those that the appellant has canceled. This proposed change avoids the unintended cancellation of claims by the Office due to an appellant's mistake in the listing of the claims in either the notice of appeal or in the appeal brief. Under current practice, if an appellant incorrectly lists the claims on appeal, or is silent in the brief as to any of the claims under rejection, then the Office assumes that such claims are not on appeal, and notes that those non-appealed claims should be cancelled by the examiner. *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) (holding that when appellant does not appeal some of the claims under rejection and does not challenge the Examiner's rejection of these claims, then the Board will treat these claims as withdrawn from the appeal, which operates as an authorization for the Examiner to cancel those claims from the application). The proposed rule would avoid potential unintended cancellation of claims due to oversight or mistake by appellants in listing the claims on appeal. This proposed change would replace the Office's procedure under *Ghuman* and simplify practice for examiners by no

longer requiring examiners to cancel non-appealed claims. Any appellant who wishes to appeal fewer than all rejected claims should file an amendment cancelling the non-appealed claims. If an appellant does not file an amendment cancelling claims that the appellant does not wish to appeal, but then also fails to provide any argument in the appeal brief directed to those claims, then the Board may simply affirm any rejections against such claims.

Amendments and Affidavits or Other Evidence After Appeal

Proposed Bd.R. 41.33(c) proposes to delete cross-references to Bd.R. 41.50(a)(2)(i) and Bd.R. 41.50(c) from the current rule. As noted *infra,* Proposed Bd.R. 41.50 proposes to delete paragraph (a)(2)(i) from the current rule and to amend paragraph (c) so that it is no longer applicable to Proposed Bd.R. 41.33(c).

Proposed Bd.R. 41.33(d)(2) proposes to delete the cross-reference to Bd.R. 41.50(a)(2)(i) from the current rule. As noted *infra,* Proposed Bd.R. 41.50 proposes to delete paragraph (a)(2)(i) from the current rule.

The ANPRM proposed to limit the types of amendments and evidence that could be filed on or after an appeal brief. The restrictions set forth in the ANPRM were identical to the restrictions in current Bd.R. 41.33.

The Office received one comment that the restrictions set forth in the ANPRM would limit the examiner's ability to enter amendments or evidence after an appeal is filed, thus potentially preventing an examiner from entering an amendment suggested by the examiner that would possibly render the claims allowable. The comment suggested adding a third condition for allowance to section (b) for an examiner-approved amendment and to add a new rule allowing appellants to submit examiner-requested evidence after an appeal is filed.

Proposed Bd.R. 41.33 does not substantively change the current rule. Both the current rule and the rule proposed in this NPRM restrict the types of amendments and evidence that can be filed after filing a brief. This approach is designed to promote efficiency of the Board in its review by ensuring that the Board has the benefit of the examiner's final evaluation of the weight and sufficiency of any evidence relied upon by appellants prior to the Board rendering a decision on appeal.

The Office received another comment that the restrictions set forth in the ANPRM would prevent appellants from submitting evidence to rebut an examiner's position raised for the first time after a notice of appeal is filed, specifically in an examiner's answer. Proposed Bd.R. 41.40 has been added to respond to the comments desiring clarification of how appellants can file a petition to the Director under Rule 1.181 seeking review of the examiner's failure to designate a rejection as a new ground of rejection if they feel that the examiner's answer contains a new ground of rejection that necessitates the filing of new amendments or new evidence. Thus, appellants are afforded due process by granting a fair opportunity to respond to all aspects of a rejection prior to appeal. Since the filing of such a Rule 1.181 petition tolls the period for filing a reply brief, appellants would not need to incur the expense of preparing and filing a reply brief if their petition is granted, and examiners would not be required to respond to appellants' requests under Rule 1.136(b) for extensions of time in which to file a reply brief while the petition is being decided.

The Office received another comment that the rule proposed in the ANPRM seemed to conflict with § 556(d) of the Administrative Procedure Act (APA) which guarantees the right to submit rebuttal evidence in agency proceedings and with case law from the Federal Circuit. As noted *supra,* the Proposed Bd.R. 41.40 in this NPRM provides appellants with procedures to file a petition to the Director under Rule 1.181 seeking review of the examiner's failure to designate a rejection as a new ground of rejection and, consequently, if granted, have an opportunity to reopen prosecution and submit rebuttal evidence, consistent with the APA.

Jurisdiction Over Appeal

Proposed Bd.R. 41.35(a) proposes to revise the current rule to provide that jurisdiction over the appeal passes to the Board upon the filing of a reply brief or the expiration of the time in which to file such a reply brief, whichever is earlier. This proposed change is deemed necessary because current Bd.R. 41.35(a) provides that the Board acquires jurisdiction upon transmittal of the file to the Board. Most patent application files are electronic files (Image File Wrapper files), not paper files. Accordingly, a paper file is no longer "transmitted" to the Board.

The Board intends to continue sending a docket notice as a courtesy to appellants to indicate that the Board has assigned an appeal number to the appeal. By having the Board's jurisdiction commence immediately upon the filing of a reply brief or the expiration of the time in which to file such a reply brief, there would be no affirmative step required to be taken by the Board prior to assuming jurisdiction and no gap in time from the end of the briefing to the commencement of jurisdiction by the Board.

The ANPRM proposed that jurisdiction of the Board would begin when a docketing notice was mailed by the Board. The Office received one comment suggesting that an appeal should be instantly docketed at the Board upon receipt of a reply brief. The Office has adopted this proposed change substantially as suggested, while taking into account that some appellants may choose not to file a reply brief. The Office received another comment suggesting that jurisdiction should pass to the Board upon the filing of the notice of appeal, and thus, the Board would be the only entity reviewing briefs for compliance with the rule. The Office chose not to adopt this proposed change, because if the Board acquired jurisdiction upon filing of a notice of appeal, this change would foreclose the opportunity for the examiner, upon reviewing the appeal brief, to find some or all of the appealed claims patentable prior to the Board taking jurisdiction, thus obviating the need to proceed with the appeal. To address the concern raised by the public comment, the Office chose instead to implement a streamlined procedure for review of briefs in *ex parte* appeals in which the Chief Judge of the Board is the sole reviewer of briefs for compliance with the rules. A streamlined procedure for review of briefs in appeals involving both patent applications (75 FR 15,689 (March 30, 2010)) and *ex parte* reexamination proceedings (75 FR 29,321 (May 25, 2010)) has already been implemented. As such, the Board is currently the only reviewing body for appeal brief compliance.

Proposed Bd.R. 41.35(b) proposes to remove from the current rule the provision that gives the Board the power to return an appeal to the examiner if the Board deems that a file is not complete or not in compliance with the requirements of Subpart B. Rather, if a file is not in condition for the Board to render a decision on the appeal, the file may be remanded to the examiner by a Director-ordered remand pursuant to Bd.R. 41.35(c). Proposed Bd.R. 41.35(b) also proposes to revise the current rule to make clear when the Board's jurisdiction ends so that no gaps in time exist between the end of the Board's jurisdiction and further action by the examiner.

The ANPRM similarly proposed revising Bd.R. 41.35(b) to set forth when the Board's jurisdiction ends. The Office

received no comments in response to this proposed change.

Proposed Bd.R. 41.35(c) proposes to add to the current rule a paragraph heading and a cross-reference to a relevant section of the rule.

Proposed Bd.R. 41.35 proposes to add a new paragraph (d) to the current rule to provide that, except for petitions authorized by part 41 of this title, the Board would not return or remand an application for consideration of an information disclosure statement or a petition filed while the Board possesses jurisdiction, and that consideration of such filings would be held in abeyance until the Board's jurisdiction ends. The Board's jurisdiction begins upon the filing of the reply brief or upon the expiration of the time for filing a reply brief. Therefore, under both current and Proposed Bd.R. 41.33(d)(2), the filing of an information disclosure statement during the Board's jurisdiction constitutes the introduction of untimely evidence. Similarly, because Rule 1.181 provides that petitions must be filed within two months of the mailing date of the action or notice from which relief is requested, and because the Board's jurisdiction begins up to two months after the mailing date of the examiner's answer (assuming no petition under Rule 1.181 is filed), it follows that all petitions relating to the examination phase of the application or reexamination proceeding ought to be filed prior to the time the Board takes jurisdiction. It is in the interest of compact prosecution that the Office not delay a decision on appeal for consideration of untimely evidence and petitions. Proposed Bd.R. 41.35(d) excludes "petitions authorized by this part." For example, petitions authorized by part 41 include petitions under Bd.R. 41.3.

Proposed Bd.R. 41.35(d) was not part of the ANPRM, and thus no comments were received pertaining to it.

Appeal Brief—Timing and Fee; and Failure To File a Brief

Proposed Bd.R. 41.37(a) and (b) propose to add paragraph headings to the current rule.

The ANPRM proposed minor wording changes to paragraphs (a) and (b), but proposed no substantive amendments. No comments were received regarding these paragraphs. In order to avoid changes to the current rule that are not necessary for clarification or improved practice and procedure, these paragraphs of the proposed rule add only descriptive headings and the remainder of the text is the same as the current rule.

Appeal Brief—Content of Appeal Brief—Preamble

Proposed Bd.R. 41.37(c)(1) proposes to add a paragraph heading to the current rule. Additionally, Proposed Bd.R. 41.37(c)(1) proposes to add the introductory phrase "Except as otherwise provided in this paragraph" to the current rule to clarify that several of the content requirements listed in paragraph (c)(1) contain exceptions that may result in an appeal brief containing fewer than all items listed in paragraph (c)(1). Proposed Bd.R. 41.37(c)(1) would also revise the current rule to correct the cross-references in light of further changes to this section, discussed *infra.*

Appeal Brief—Content of Appeal Brief—Real Party in Interest

Proposed Bd.R. 41.37(c)(1)(i) proposes to revise the current rule to provide that the statement identifying the real party in interest should be accurate as of the date of filing of the appeal brief. Proposed Bd.R. 41.37(c)(1)(i) would revise the current rule to allow the Board to assume, if the statement of real party in interest is omitted from the appeal brief, that the named inventors are the real party in interest. These changes are proposed to decrease the burden on appellants by allowing appellants to omit this statement if the named inventors are the real party in interest. The purpose of this section is to enable Administrative Patent Judges to determine whether they have a conflict of interest with the real parties in the case and then to appropriately recuse themselves if such a conflict of interest is found. The information required in Proposed Bd.R. 41.37(c)(1)(i) is the minimum information needed by the Board to effectively make this determination.

The ANPRM proposed a default rule that if the brief omits this statement, the Office would assume that the named inventors are the real party in interest. The Office received no comments in response to these proposed changes.

The proposed rule includes substantially the same default provision as the ANPRM, but it states that the Office "may" make the assumption. Thus, the Office is not required to make the assumption if it is aware of information to the contrary.

Appeal Brief—Content of Appeal Brief—Related Appeals and Interferences

Proposed Bd.R. 41.37(c)(1)(ii) would be revised to limit the required disclosure of related appeals, interferences and judicial proceedings (collectively "related cases") to only those which: (1) Involve an application or patent owned by the appellant or assignee, (2) are known to appellant, and (3) may have a bearing on the Board's decision. The section would also be revised to permit appellants to omit the statement entirely if there are no such related cases, and to provide a default assumption for the Office in the event the statement is omitted.

The ANPRM proposed revising this requirement to make clear that appellants are under a continuing obligation to update the statement of related cases. The ANPRM also proposed a default rule that if the brief omits this statement; the Office would assume that there are no such related cases.

The Office received several comments to the proposed changes to this section in the ANPRM (41.37(g) of the ANPRM). Specifically, one comment stated that the language of the ANPRM was overly broad, and suggested that the rule should be narrowed to require disclosure of only applications of the assignee, and that the continuing obligation to update this information was unduly burdensome to appellants. Another comment stated that the information that was required in the ANPRM was available to the Office and that requiring appellants to disclose this level of detail would be unduly burdensome. Another comment was concerned with charges of inequitable conduct for failure to include related appeals and proposed that the rules require appellants to identify only related U.S. court actions and decisions, and that the Office should bear the burden of searching the IFW system to identify related cases. Another comment stated that the rules should not impose a continuing obligation to update this information throughout the course of the appeal as that places a large burden on appellants. Another comment posited that the language in the ANPRM was overbroad and vague. Another comment stated that the term "significant" used in the ANPRM was indefinite. Another comment expressed concern that the term "related case" was used differently in the ANPRM than it is used for Information Disclosure Statements and suggested clarifying the term or adopting new terminology.

In response to some of the concerns raised by these comments, the proposed rule has narrowed the information required to be included in the statement of related cases in the appeal brief, as compared to the current rule, to limit the statement to appeals in cases which are owned by the same appellant(s) or assignee. The proposed rule removes the language in the prior proposed Bd.R.

41.37(c)(1)(ii) regarding a continuing obligation to update this information. The proposed rule in this NPRM retains a default provision, originally proposed in the ANPRM, so that a statement that there are "no known related cases" is not required and that fact "may" be inferred from the absence of a statement. The proposed rule also no longer requires filing of copies of decisions in related cases. The narrowed scope of this proposed section, as compared to the current rule, lessens the burden on appellants from the statement that is currently required and addresses concerns raised in the comments received to the ANPRM.

Appeal Brief—Content of Appeal Brief—Status of Claims

Proposed Bd.R. 41.37(c)(1)(iii) omits the current requirement for the appeal brief to contain an indication of the status of claims.

Appeal Brief—Content of Appeal Brief—Statement of Last Entered Amendment

Proposed Bd.R. 41.37(c)(1)(iv) proposes to eliminate the current requirement to provide a statement of the status of any amendment filed subsequent to final rejection, and would require that appellants simply provide a statement identifying, by date of filing, the last entered amendment of the claims. The proposed rule also provides a default that the Office may assume no amendments to the claims exist if the appeal brief omits this statement.

The ANPRM, like the current rule, required the appeal brief to include a statement of the status of all amendments filed after final rejection. The Office is proposing instead in this NPRM that the Office bear the burden of reviewing the IFW to identify the claims on appeal. The proposed rule requires appellants to provide the date of filing of the last entered amendment only so that the Board will know the set of claims to which the appellant's arguments apply.

Appeal Brief—Content of Appeal Brief—Summary of Claimed Subject Matter

Proposed Bd.R. 41.37(c)(1)(v) proposes to revise the current rule to require that the summary of claimed subject matter include an annotated copy of each rejected independent claim wherein the annotations would appear after each limitation in dispute by appellant and include a reference to the specification in the Record showing support for the claim language sufficient to allow the Board to understand the claim. Proposed Bd.R. 41.37(c)(1)(v) would also apply to each means plus function or step plus function recitation in dispute by appellant. Additionally, Proposed Bd.R. 41.37(c)(1)(v) would clarify that reference to the pre-grant patent application publication is not sufficient to satisfy the requirements for the summary of claimed subject matter.

The ANPRM proposed to revise the summary of claimed subject matter to require an annotated copy of each element of each independent claim. The ANPRM also proposed to revise this requirement to call for an annotated copy of every means plus function or step plus function recitation in any independent claim on appeal or in any dependent claim separately argued.

The Office received a comment that it was not clear in the ANPRM whether this rule would have imposed a requirement to cite every instance of support, or simply to provide citations sufficient to understand the scope and meaning of the claim limitations. Another comment similarly requested the Office to clarify that this provision is only an aid to understanding the claimed subject matter, and that the Office will construe claims based upon the entire disclosure. Another comment suggested that the rule should not require appellants to cite to every instance of support in the Specification, but only the "best" support in the Specification.

These comments were well taken. The proposed rule makes clear that the reference to the specification and figures required under this section need only be "sufficient to understand the claim," thus clarifying that every reference to the claim limitation in the specification need not be cited.

The Office received numerous comments that the rule should not require appellants to map claim elements not in dispute. Some comments stated that it is against a practitioner's interest to say more than what is required for issues on appeal as it raises potential malpractice issues for practitioners. Other comments stated that requiring appellants to map all claim elements, including elements not in dispute, would be comparable to requiring the practitioner to evaluate claim support, which would potentially waive arguments or take positions that create estoppels or disclaimers, leading to potential malpractice claims.

In response to these comments, the proposed rule limits the requirement to annotate the claims to only those limitations which are actually in dispute, thus significantly limiting any potential estoppel or malpractice issues.

The Office received another comment suggesting that there should be no requirement to map claim support for independent claims which are not argued separately as they will be affirmed or rejected as a group.

The Office declined to change this requirement of the current rule. Thus, the proposed rule still requires appellants to provide a summary of claimed subject matter for each rejected independent claim. The Office decided not to change this requirement because each independent claim in a group may be different in scope and no one claim may clearly be the "broadest." The Board has the option to select a single claim from a group to decide the appeal as to the group of claims. The Board needs claim mapping for each independent claim so that it can select which claim is representative of the group. Otherwise, appellants might select one claim to map and the Board might decide to select a different claim as representative of the group, in which case the Board will not have the benefit of the claim summary for the selected representative claim.

The proposed rule further clarifies the requirement for reference to the specification by noting that it should be by annotation of the actual claim language with reference to the page and line number or paragraph number of the specification. The proposed rule further clarifies that citation to the pre-grant publication of the application is not acceptable.

The Office received one comment suggesting that the Board clarify the current rule by giving examples and guidance to practitioners rather than by adopting a new rule. The following are examples of acceptable claim summaries:

In each example, the only claim limitation in dispute in the appeal, and thus the only claim limitation annotated, is the "pivot axle" limitation of the claim.

Example 1:

1. An apparatus, comprising:
   A first arm;
   a second arm; and
   a pivot axle (Spec. 6, ll. 1–10; Spec. 7, ll. 21–27; figs. 1, 2) disposed between said first arm and said second arm.

Example 2:

1. An apparatus, comprising:
   A first arm;
   a second arm; and
   a pivot axle (paras. 0032, 0033, 0040; figs. 1, 2) disposed between said first arm and said second arm.

The Office received one comment requesting that the rule should allow various formats based on USPTO provided models, including a columnar chart, which would provide more

flexibility to appellants. This suggestion was not adopted because the formats received under the current rule vary widely, with some summaries containing little to no useful information. It is important to impose a specific format for this rule to ensure that the Board obtains the information that will be most useful. This requirement for a strict format has been offset with a lessening of the burden on appellants by requiring annotation only for those elements in dispute. Also, the proposed rule is more flexible than the current rule in that it allows citation to paragraph number, rather than limiting citations to page and line number of the specification.

The Office received another comment that the current rule is sufficient to provide an "easy reference guide * * * to the relevant sections of the specification" and that a more detailed requirement (such as that proposed in the ANPRM) is unnecessary. In drafting the proposed rule, the current rule was used as the basis for the revisions, rather than the rule proposed in the ANPRM. Proposed Bd.R. 41.37(c)(1)(v) would provide a less detailed requirement than Bd.R. 41.37(c)(1)(v) because the proposed rule requires annotation only for those elements in dispute.

The Office received another comment suggesting that if appellant does not identify structure for a § 112, ¶ 6 analysis, then "for purposes of the appeal" such limitations should not be limited to their corresponding structure under § 112, ¶ 6. In light of the Federal Circuit's decision in *In re Donaldson Co.,* 16 F.3d 1189, 1195 (Fed. Cir. 1994) (en banc), in which the court held that the Office "may not disregard the structure disclosed in the specification corresponding to [means-plus-function] language when rendering a patentability determination," the Board cannot ignore the structure corresponding to a means plus function limitation to decide an appeal. As a compromise, the proposed rule does not require appellant to provide claim mapping for a § 112, ¶ 6 limitation if that limitation is not in dispute.

Appeal Brief—Content of Appeal Brief—Grounds of Rejection To Be Reviewed on Appeal

Bd.R. 41.37(c)(1)(vi) requires that the appeal brief include a statement of the grounds of rejection. The proposed rule eliminates the requirement for a statement of the grounds of rejection from the brief. Under Proposed Bd.R. 41.31(c), discussed *supra,* the Board would presume that all rejections made in the Office Action from which the appeal was taken are before it on appeal, unless appellant cancels the claim(s) subject to a particular rejection. Moreover, under Proposed Bd.R. 41.37(c)(1)(vii), discussed *infra,* the headings of the argument section of the brief shall reasonably identify the ground of rejection being contested. Therefore, it is unnecessary for the appeal brief to contain a separate statement of the grounds of rejection on appeal—a source of internal inconsistency in appeal briefs filed under the current rules.

Appeal Brief—Content of Appeal Brief—Argument

Proposed Bd.R. 41.37(c)(1)(vii) proposes to revise the current rule to clarify that the argument section should specifically explain why the examiner erred as to each ground of rejection contested by appellants. The proposed revision would also provide that, except as provided for in Proposed Bd.R. 41.41, 41.47, and 41.52, any arguments not included in the appeal brief will not be considered by the Board "for purposes of the present appeal." Additionally, Proposed Bd.R. 41.37(c)(1)(vii) would require that each ground of rejection argued be set forth in a separate section with a heading that reasonably identifies the ground being argued therein. Further, the proposed rule would require that any claim(s) argued separately or as a subgroup be placed under a separate subheading that identifies the claim(s) by number.

The ANPRM proposed to amend the argument section of the brief to require an explanation as to why the examiner erred. The ANPRM also stated that any finding or conclusion of the examiner that is not challenged would be presumed to be correct and that appellant would waive all arguments that could have been, but were not, addressed in the argument section of the brief.

The Office received a large number of comments regarding the presumption of examiner correctness language in the ANPRM. Several comments stated that the proposed presumption of examiner correctness language improperly placed the burden of persuasion on appellants to show error in the examiner's rejection, is inconsistent with the statutory requirements of the Board, and is inconsistent with case law. Other comments noted concern that the duration and scope of the presumption of examiner correctness was not made clear in the proposed language of the ANPRM. Another comment noted that it is difficult to respond to all "points" stated by the examiner when the examiner's positions are not clearly delineated in the Office action. Other comments expressed concern that such a presumption would force appellants to contest every point made by the examiner instead of allowing them to focus the issues for appeal. In response to these comments, the proposed rule in this NPRM omits the presumption of examiner correctness from the rule.

One comment suggested that the argument section of this rule should be changed to read, "The 'argument' shall explain why the examiner erred as to each ground of rejection to be reviewed. Each ground of rejection shall be separately argued under a separate heading." The proposed rule substantially adopts this suggested language.

The Office received further comments regarding the waiver language of this portion of the ANPRM. Specifically, the Office received some comments that the waiver provision would limit the Board's ability to independently review the examiner's rejections and base the decision on the entire record on appeal. Other comments stated that the waiver provision would lead to piecemeal review of the examiner's rejection. One comment suggested that, if the Board adopted this waiver language, the Board should also limit the review of the examiner's answer to the facts and reasons set forth therein. One comment distinguished between Federal Circuit waiver cases and BPAI waiver cases, because at the Federal Circuit both sides are precluded from raising new issues on appeal, whereas at the Board the examiner may raise new issues.

The proposed rule in this NPRM omits the waiver language from the rule. Nonetheless, the case law supports the Office's position on waiver, so despite the waiver language not being included in the rule, the Board will still treat as waived, for purposes of the present appeal, any arguments not raised by appellant. *See Hyatt* v. *Dudas,* 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived); *In re Watts,* 354 F.3d 1362, 1368 (Fed. Cir. 2004) (declining to consider the appellant's new argument regarding the scope of a prior art patent when that argument was not raised before the Board); and *In re Schreiber,* 128 F.3d 1473, 1479 (Fed. Cir. 1997) (declining to consider whether prior art cited in an obviousness rejection was non-analogous art when that argument was not raised before the Board).

The Office received another comment noting concern that the scope of the "waiver" is unclear, and noting that appellants should not be precluded from making arguments during

continued prosecution based on a waiver set forth in a prior appeal. Several comments suggested that the waiver should be limited in applicability for "purposes of appeal only." The proposed rule permits the Board to refuse to consider arguments not raised in the appeal brief, except as provided in Proposed Bd.R. 41.41, 41.47, and 41.52. This proposed language is substantially the same as the current Bd.R. 41.37(c)(1)(vii), which states that "[a]ny arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown." Proposed Bd.R. 41.41, 41.47, and 41.52 have provisions allowing certain new arguments for good cause in reply briefs, at oral hearing, or in requests for rehearing which ensure that appellants have a full and fair opportunity to be heard before the Board. The proposed rule clarifies that the Board's right to refuse consideration of arguments not raised is "for purposes of the present appeal" so as to clarify that such right of refusal does not extend to subsequent Board appeals in the same or related applications. *See Abbott Labs.* v. *TorPharm, Inc.,* 300 F.3d 1367, 1379 (Fed. Cir. 2002) ("[P]recedent has long supported the right of an applicant to file a continuation application despite an unappealed adverse Board decision, and to have that application examined on the merits. Where the Patent Office has reconsidered its position on patentability in light of new arguments or evidence submitted by the applicant, the Office is not forbidden by principles of preclusion to allow previously rejected claims." (internal citation omitted)).

Proposed Bd.R. 41.37(c)(1)(vii) also proposes to revise the current rule to clarify the proper use of headings and to require the use of subheadings in order to clearly set out the ground of rejection and the specific claims to which each argument presented applies. These headings and subheadings will make certain that arguments are not overlooked by the examiner or the Board. The Office received one comment suggesting that allowing "substantial" compliance with the heading requirement of the appeal brief would prevent unnecessary delays in the appellate process. The comment stated that the requirement for headings has sometimes been interpreted by the Office to require a verbatim correlation to the ground of rejection as articulated by the examiner. The comment suggested that to prevent this requirement from being interpreted as a verbatim requirement, the rule should contain the following language "An appeal brief that substantially complies with the content requirements will not be deemed non-compliant for minor errors in form." While the Office declined to add this proposed language to the rule, now that the Office has a sole reviewer of appeal briefs for compliance with this rule, the content requirements of this paragraph will not be interpreted as verbatim requirements and briefs will not be held non-compliant for minor formatting issues. In particular, as to the heading requirement, Proposed Bd.R. 41.37(c)(1)(vii) requires, "Each ground of rejection contested by appellant must be argued under a separate heading, each heading shall reasonably identify the ground of rejection being contested (*e.g.,* by claim number, statutory basis, and applied reference, if any)." This proposed language means that the heading should contain enough detail so that the Office knows which ground of rejection is being argued. As to the subheading requirement, Proposed Bd.R. 41.37(c)(1)(vii) requires, "Under each heading identifying the ground of rejection being contested, any claim(s) argued separately or as a subgroup shall be argued under a separate subheading that identifies the claim(s) by number." The Office offers the following examples of appropriate headings and subheadings which can be used for claims argued as a group, subgroup, or separately.

Example 1: Claims 1–20 are pending. Claims 1–10 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith, and claims 11–20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith and Jones. Appellant wishes to argue claims 1–10 as a group, and wishes to argue claims 11–19 as a subgroup and claim 20 separately.

[Heading 1:] "Rejection of claims 1–10 under 35 U.S.C. 102(b) as anticipated by Smith"

[Add Argument for claims 1–10 here].

(**Note:** Because claims 1–10 are being argued as a single group for this ground of rejection, there is no need for any subheadings.)

[Heading 2:] "Rejection of claims 11–20 under 35 U.S.C. 103(a) over Smith and Jones"

[Subheading 1:] "*Claims 11–19*"
[Add Argument for claims 11–19 here].
[Subheading 2:] "*Claim 20*"
[Add Argument for claim 20 here].

Example 2: Same facts as in Example 1 above.

[Heading 1:] "Anticipation Rejection"

[Add Argument for claims 1–10 here]

(**Note:** Because there is only one anticipation rejection in the appeal, this heading is sufficient for the Board to know which ground of rejection is being argued. Also, because claims 1–10 are being argued as a single group for this ground of rejection, there is no need for any subheadings.)

[Heading 2:] "Obviousness Rejection"

(**Note:** Because there is only one obviousness rejection in the appeal, this heading is sufficient for the Board to know which ground of rejection is being argued.)

[Subheading 1:] "*Claims 11–19*"
[Add Argument for claims 11–19 here].
[Subheading 2:] "*Claim 20*"
[Add Argument for claim 20 here].

Appeal Brief—Content of Appeal Brief—Claims Appendix

The proposed rule deletes Bd.R. 41.37(c)(1)(viii).

Bd.R. 41.37(c)(1)(viii) and the ANPRM required appellants to include a claims appendix with the brief. The proposed rule deletes the claims appendix from the briefing requirements. Because the last entered amendment is the most accurate reflection of the claims on appeal, the Office would look to the claims as presented in the last entered amendment as the claims on appeal.

Appeal Brief—Content of Appeal Brief—Evidence Appendix

The proposed rule deletes Bd.R. 41.37(c)(1)(ix).

Bd.R. 41.37(c)(1)(ix) and the ANPRM required appellants to include an evidence appendix with the brief. The Office received comments expressing concern that requiring inclusion of an evidence appendix including copies of documents already available to the Board in the Record is burdensome on appellants and does not improve efficiency at the Board. The proposed rule deletes the evidence appendix from the briefing requirements to address these concerns. The Office decided to assume the burden of locating copies of the evidence relied upon in the Record rather than requiring appellants to provide copies with their appeal brief. While it is no longer a requirement to include an evidence appendix, the Office strongly encourages and appreciates receiving copies of the evidence relied upon. This ensures that the Board is considering the proper evidence and avoids any confusion as to

the particular evidence referenced in the appeal brief. In the alternative, the Board recommends that appellants clearly identify in the appeal brief the evidence relied upon using a clear description of the evidence along with the date of entry of such evidence into the Image File Wrapper.

Appeal Brief—Content of Appeal Brief—Related Proceedings Appendix

The proposed rule deletes Bd.R. 41.37(c)(1)(x).

Bd.R. 41.37(c)(1)(x) and the ANPRM required appellants to include a related proceedings appendix with the brief. The Office received one comment expressing concern about the cost burden that this requirement imposes on appellants. To address this concern, the proposed rule deletes the related proceedings appendix from the briefing requirements.

Appeal Brief—New or Non-Admitted Amendments or Evidence

Proposed Bd.R. 41.37(c)(2) adds a sentence to the current rule to make clear in the rule the current Office procedure for review of an examiner's refusal to admit an amendment or piece of evidence by petition to the Director under Rule 1.181.

Appeal Brief—Notice of Non-Compliance

Proposed Bd.R. 41.37(d) proposes to revise the current rule to add a paragraph heading and to provide that under the Office's new streamlined procedure for review of *ex parte* appeal briefs for compliance with the rule, review of a determination of non-compliant appeal brief should be requested via a petition to the Chief Judge.

While the ANPRM did not propose to substantively amend this section of the current rule, the Office received many comments at the roundtable and in the written comments expressing concern that too many briefs were being returned as non-compliant.

To address this concern, the Board, independently from these proposed rules, implemented a streamlined procedure for review of briefs for compliance with Bd.R. 41.37(c) under which the Board has the sole authority to hold briefs as non-compliant (75 FR 15,689 (March 30, 2010)). This process ensures consistent application of the appeal brief rules and leads to fewer determinations of non-compliance. As this change has already been implemented, appellants should notice a decrease in determinations of non-compliance immediately. Also, because the proposed rule includes fewer overall briefing requirements and provides for default assumptions if certain portions of the brief are omitted, the proposed rule will result in even fewer determinations that briefs are non-compliant than under the current rule.

Appeal Brief—Extensions of Time

Proposed Bd.R. 41.37(e) proposes to add a paragraph heading to the current rule.

Examiner's Answer

Proposed Bd.R. 41.39(a) proposes to add a paragraph heading and preamble to the current rule.

Proposed Bd.R. 41.39(a)(1) proposes to revise the current rule to provide that the examiner's answer, by default, incorporates all the grounds of rejection set forth in the Office action which is the basis for the appeal, including any modifications made via advisory action or pre-appeal brief conference decision, except for any grounds of rejection indicated by the examiner as withdrawn in the answer. Proposed Bd.R. 41.39(a)(1) proposes to delete the requirement that the answer include an explanation of the invention claimed and of the grounds of rejection, since the Board would rely on appellant's specification and summary of claimed subject matter for an explanation of the invention claimed and would rely on the statement of the rejection(s) in the Office action from which the appeal is taken.

Proposed Bd.R. 41.39(a)(2) proposes to revise the current rule to provide that if a rejection set forth in the answer relies on any new evidence not relied on in the Office action from which the appeal is taken, then the rejection must be designated as a new ground of rejection, and any answer that contains such a new ground of rejection must be approved by the Director.

The Office received a comment requesting that the rule make clear that any new ground of rejection raised in the examiner's answer must be approved by a Technology Center Director. This requirement is currently in the MPEP. *See* MPEP § 1207.03. The Office chose to include a requirement in the proposed rule that the Director must approve a new ground of rejection in the examiner's answer to make clear that the Office plans to continue this requirement for supervisory review of new grounds of rejection. The Director may choose to delegate this authority as appropriate.

The Office received several comments requesting parity between the requirements and restrictions on the appeal brief (*e.g.,* no new evidence) and those placed on the answer. Additionally, some comments stated that if examiners are permitted to use new evidence in the answer, then appellants should be able to add new evidence in the briefs. The Office also received comments stating that it is often unclear when a new reference actually constitutes a new ground of rejection and requesting that examiners should be required to disclose where a rejection was first entered into the record so as to prevent examiners from adding rejections without so designating them. These comments also raised concerns that when a potential new ground of rejection is not so designated, it forces appellants to file a request for continued examination which negatively impacts patent term. Another comment suggested that examiners should be barred from citing new evidence in an answer unless they designate it as a new ground of rejection. In view of these comments, the Office proposes to amend the rule to clarify that, for purposes of the examiner's answer, any rejection which relies upon new evidence shall be designated as a new ground of rejection. The proposed rule would continue to provide appellants the option to reopen prosecution or maintain the appeal by filing a reply brief to respond to the new ground of rejection.

To further address the desire for parity, the content requirements for appeal briefs have been significantly decreased so as not to create a disparity in the requirements between the brief and the answer. Content requirements for the examiner's answer were not included in the rule, because the Office needs to retain flexibility to add content requirements as needed by revision of the MPEP. However, the Office plans to continue to require that the examiner's answer contain a grounds of rejection section that would set forth any rejections that have been withdrawn and any new grounds of rejection, and the answer would further be required to contain a response to arguments section to include any response the examiner has to arguments raised in the appeal brief. *See* MPEP § 1207.02. The answer would no longer be required to restate the grounds of rejection. The Board would instead rely on the statement of the grounds of rejection in the Office action from which the appeal was taken (as modified by any subsequent Advisory Action or Pre-Appeal Brief Conference Decision).

The Office received several comments opposing an examiner's right to enter a new ground of rejection in an examiner's answer. While the Office agrees that the entry of new grounds of rejection in an examiner's answer

should be a rare occurrence, the Office determined that the option to enter a new ground of rejection in an examiner's answer should be retained in the proposed rule for those situations in which new evidence comes to light later in the prosecution. The proposed rule codifies the Office's standing procedure that requires supervisory approval of each new ground of rejection.

The Office received some comments suggesting to allow appellants the option of reopening prosecution regardless of whether or not an examiner designates a rejection as containing a new ground. The Office received a further comment requesting the Office provide further guidance as to what constitutes a new ground of rejection.

An appellant always has the option to reopen prosecution after filing a notice of appeal, by filing a request for continued examination (RCE) during the pendency of the application, but under the proposed rule the Office would allow appellant to reopen prosecution without having to file an RCE only if the examiner's answer is designated as containing a new ground of rejection. Proposed new Bd.R. 41.40, discussed *infra,* delineates the process by which appellant can seek review of the primary examiner's failure to designate a rejection as a new ground of rejection should appellant feel that the examiner's answer contains a new ground of rejection that has not been designated as such.

The following discussion provides guidance to appellants and examiners as to the Office's view of what constitutes a new ground of rejection. This discussion is limited for "purposes of the examiner's answer," as per Proposed Bd.R. 41.39(a)(2). This discussion does not apply to final rejections under Rule 1.113. The reason for this distinction is that Rule 1.116 affords applicants the opportunity to submit rebuttal evidence after a final rejection but before or on the same date of filing a notice of appeal. An appellant's ability to introduce new evidence after the filing of an appeal is more limited under Bd.R. 41.33(d) and proposed Bd.R. 41.33(d) than it is prior to the appeal. Thus, applicants are able to present rebuttal evidence in response to a final rejection, while they are not permitted to do so in response to an examiner's answer on appeal, unless an answer is designated as containing a new ground of rejection.

If new evidence (such as a new prior art reference) is applied or cited for the first time in an examiner's answer, then Proposed Bd.R. 41.39(a)(2) requires that the rejection be designated as a new ground of rejection. If the citation of a new prior art reference is necessary to support a rejection, it must be included in the statement of rejection, which would be considered to introduce a new ground of rejection. Even if the prior art reference is cited to support the rejection in a minor capacity, it should be positively included in the statement of rejection and be designated as a new ground of rejection. *In re Hoch,* 428 F.2d 1341, 1342 n.3 (CCPA 1970).

Relying on new evidence, however, is not the only way to trigger a new ground of rejection in an examiner's answer. A "position or rationale new to the proceedings"—even if based on evidence previously of record—may give rise to a new ground of rejection. *In re De Blauwe,* 736 F.2d 699, 706 n.9 (Fed. Cir. 1984) (stating that where the Office advances "a position or rationale new to the proceedings, an applicant must be afforded an opportunity to respond to that position or rationale by submission of contradicting evidence" (citing *In re Eynde,* 480 F.2d 1364 (CCPA 1973))).

To avoid triggering a new ground of rejection in an examiner's answer, the examiner is not required to use identical language in both the examiner's answer and the Office action from which the appeal is taken. It is not a new ground of rejection, for example, if the examiner's answer responds to appellant's arguments using different language, or restates the reasoning of the rejection in a different way, so long as the evidence relied upon is the same and the "basic thrust of the rejection" is the same. *In re Kronig,* 539 F.2d 1300, 1303 (CCPA 1976); *see also In re Noznick,* 391 F.2d 946, 949 (CCPA 1968) (no new ground of rejection made when "explaining to appellants why their arguments were ineffective to overcome the rejection made by the examiner"); *In re Krammes,* 314 F.2d 813, 817 (CCPA 1963) ("It is well established that mere difference in form of expression of the reasons for finding claims unpatentable or unobvious over the references does not amount to reliance on a different ground of rejection." (citation omitted)); *In re Cowles,* 156 F.2d 551, 1241 (CCPA 1946) (holding that the use of "different language" does not necessarily trigger a new ground of rejection).

The following examples are intended to provide guidance as to what constitutes a new ground of rejection in an examiner's answer. What constitutes a "new ground of rejection" is a highly fact-specific question. *See, e.g., Kronig,* 539 F.2d at 1303 (finding new ground entered based upon "facts of this case" and rejecting other cases as controlling given "distinctive facts at bar"); *In re Ahlert,* 424 F.2d 1088, 1092 (CCPA 1970) ("[l]ooking at the facts of this case, we are constrained to hold" that a new ground was entered). If a situation arises that does not fall neatly within any of the following examples, it is recommended that the examiner identify the example below that is most analogous to the situation at hand, keeping in mind that "the ultimate criterion of whether a rejection is considered 'new' * * * is whether appellants have had fair opportunity to react to the thrust of the rejection." *Kronig,* 539 F.2d at 1302.

Factual Situations That Constitute a New Ground of Rejection

1. *Changing the statutory basis of rejection from § 102 to § 103.* If the examiner's answer changes the statutory basis of the rejection from § 102 to § 103, then the rejection should be designated as a new ground of rejection. For example, in *In re Hughes,* 345 F.2d 184 (CCPA 1965), the Board affirmed an examiner's rejection under § 102 over a single reference. On appeal, the Solicitor argued that the Board's decision should be sustained under § 103 over that same reference. The court declined to sustain the rejection under § 103, holding that a change in the statutory basis of rejection would constitute a new ground of rejection, and observed that "the issues arising under the two sections [§§ 102 and 103] may be vastly different, and may call for the production and introduction of quite different types of evidence." *Hughes,* 345 F.2d at 186–87. *See also In re Moore,* 444 F.2d 572 (CCPA 1971) (holding the Board's decision contained a new ground of rejection, wherein the examiner rejected the claims under § 102 based on applicant's failure to show prior discovery of utility, and wherein the Board affirmed the rejection based on obviousness of that utility under § 103).

2. *Changing the statutory basis of rejection from § 103 to § 102, based on a different teaching.* If the examiner's answer changes the statutory basis of the rejection from § 103 to § 102, and relies on a different portion of a reference which goes beyond the scope of the portion that was previously relied upon, then the rejection should be designated as a new ground of rejection. For example, in *In re Echerd,* 471 F.2d 632, 635 (CCPA 1973), the examiner rejected the claims under § 103 over a combination of two references. The Board then changed the ground of rejection to § 102 over one of those references, relying on a different portion of that reference for some claim limitations, and asserted that the

remaining claim limitations were inherently present in that reference. The court held that the Board's affirmance constituted a new ground of rejection. *Echerd,* 471 F.2d at 635 ("[A]ppellants should have been accorded an opportunity to present rebuttal evidence as to the new assumptions of inherent characteristics." (citation omitted)).

3. *Citing new calculations in support of overlapping ranges.* If a claim reciting a range is rejected as anticipated or obvious based on prior art that falls within or overlaps with the claimed range (*see* MPEP §§ 2131.03 and 2144.05), and the rejection is based upon range values calculated for the first time in the examiner's answer, then the rejection should be designated as a new ground of rejection. For example, in *In re Kumar,* 418 F.3d 1361 (Fed. Cir. 2005), the examiner rejected the claims under § 103 based on overlapping ranges of particle sizes and size distributions. The Board affirmed the rejection, but included in its decision an Appendix containing calculations to support the prima facie case of obviousness. The court held the Board's reliance upon those values to constitute a new ground of rejection, stating that "the Board found facts not found by the examiner regarding the differences between the prior art and the claimed invention, which in fairness required an opportunity for response." *Kumar,* 418 F.3d at 1368 (citation omitted).

4. *Citing new structure in support of structural obviousness.* If, in support of an obviousness rejection based on close structural similarity (*see* MPEP § 2144.09), the examiner's answer relies on a different structure than the one on which the examiner previously relied, then the rejection should be designated as a new ground of rejection. For example, in *In re Wiechert,* 370 F.2d 927 (CCPA 1967), the examiner rejected claims to a chemical composition under § 103 based on the composition's structural similarity to a prior art compound disclosed in a reference. The Board affirmed the rejection under § 103 over that same reference, but did so based on a different compound than the one the examiner cited. The court held that the Board's decision constituted a new ground of rejection, stating, "Under such circumstances, we conclude that when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference." *Wiechert,* 370 F.2d at 933.

5. *Pointing to a different portion of the claim to maintain a "new matter" rejection.* If, in support of a claim rejection under 35 U.S.C. 112, first paragraph, based on new matter (*see* MPEP § 2163.06), a different feature or aspect of the rejected claim is believed to constitute new matter, then the rejection should be designated as a new ground of rejection. For example, in *In re Waymouth,* 486 F.2d 1058, 1059 (CCPA 1973), the claims included the limitation "said sodium iodide * * * present in amount of at least 0.17 mg./cc. of said arc tube volume." The examiner's rejection stated that the claimed "sodium iodide" constituted new matter because the specification was alleged only to disclose "sodium." The Board affirmed the rejection, but did so on a "wholly different basis," namely, that the specification failed to disclose the claimed "0.17 mg./cc." volume limitation. *Waymouth,* 486 F.2d at 1060. The court held that the Board's rationale constituted a new ground of rejection, "necessitating different responses by appellants." *Id.* at 1061.

Factual Situations That Do Not Constitute a New Ground of Rejection

1. *Citing a different portion of a reference which goes no farther than, and merely elaborates upon, what is taught in the previously cited portion of that reference.* If the examiner's answer cites a different portion of an applied reference which goes no farther than, and merely elaborates upon, what is taught in the previously cited portion of that reference, then the rejection does not constitute a new ground of rejection. For example, in *In re DBC,* 545 F.3d 1373 (Fed. Cir. 2008), the examiner rejected the claims under § 103 over a combination of references, including the English translation of the abstract for a Japanese patent. The examiner cited the English abstract for two claim limitations: (1) Mangosteen rind, and (2) fruit or vegetable juice. The Board affirmed the rejection under § 103 over the same references, but instead of citing the abstract, the Board cited an Example on page 16 of the English translation of the Japanese reference, which was not before the examiner. *DBC,* 545 F.3d at 1381. Importantly, the Board cited the Example for the same two claim limitations taught in the abstract, and the Example merely elaborated upon the medicinal qualities of the mangosteen rind (which medicinal qualities were not claimed) and taught orange juice as the preferred fruit juice (while the claim merely recited fruit or vegetable juice). Hence, the Example merely provided a more specific disclosure of the same two generic limitations that were fully taught by the abstract. The court held that this did not constitute a new ground of rejection because "the example in the translation goes no farther than, and merely elaborates upon, what is taught by the abstract." *DBC,* 545 F.3d at 1382 n.5.

2. *Changing the statutory basis of rejection from § 103 to § 102, but relying on the same teachings.* If the examiner's answer changes the statutory basis of the rejection from § 103 to § 102, and relies on the same teachings of the remaining reference to support the § 102 rejection, then the rejection does not constitute a new ground of rejection. For example, in *In re May,* 574 F.2d 1082 (CCPA 1978), a claim directed to a genus of chemical compounds was rejected under § 103 over a combination of references. The primary reference disclosed a species that fell within the claimed genus. Both the examiner and the Board cited the species to reject the claim under § 103. The court affirmed the rejection, but did so under § 102, stating that "lack of novelty is the epitome of obviousness." *May,* 574 F.2d at 1089 (citing *In re Pearson,* 494 F.2d 1399, 1402 (CCPA 1974)). Because the court relied on the same prior art species as both the examiner and Board, the court held that this did not constitute a new ground of rejection. *May,* 574 F.2d at 1089.

3. *Relying on fewer than all references in support of a § 103 rejection, but relying on the same teachings.* If the examiner's answer removes one or more references from the statement of rejection under § 103, and relies on the same teachings of the remaining references to support the § 103 rejection, then the rejection does not constitute a new ground of rejection. For example, in *In re Kronig,* 539 F.2d 1300, 1302 (CCPA 1976), the examiner rejected the claims under § 103 over four references. The Board affirmed the rejection under § 103, but limited its discussion to three of the references applied by the examiner. *Id.* The Board relied upon the references for the same teachings as did the examiner. The court held that this did not constitute a new ground of rejection. *Kronig,* 539 F.2d at 1303 ("Having compared the rationale of the rejection advanced by the examiner and the board on this record, we are convinced that the basic thrust of the rejection at the examiner and board level was the same."). *See also In re Bush,* 296 F.2d 491, 495–96 (CCPA 1961) (Examiner rejected claims 28 and 29 under § 103 based upon "Whitney in view of Harth;" Board did not enter new ground of rejection by relying only on Whitney).

4. *Changing the order of references in the statement of rejection, but relying on the same teachings of those references.*

If the examiner's answer changes the order of references in the statement of rejection under § 103, and relies on the same teachings of those references to support the § 103 rejection, then the rejection does not constitute a new ground of rejection. For example, in *In re Cowles,* 156 F.2d 551, 552 (CCPA 1946), the examiner rejected the claims under § 103 over "Foret in view of either Preleuthner or Seyfried." The Board affirmed the rejection under § 103, but styled the statement of rejection as to some of the rejected claims as "Seyfried in view of Foret," but relied on the same teachings of Seyfried and Foret on which the examiner relied. The court held that this did not constitute a new ground of rejection. *Cowles,* 156 F.2d at 554. *See also In re Krammes,* 314 F.2d 813, 816–17 (CCPA 1963) (holding that a different "order of combining the references" did not constitute a new ground of rejection because each reference was cited for the "same teaching" previously cited).

5. *Considering, in order to respond to applicant's arguments, other portions of a reference submitted by the applicant.* If an applicant submits a new reference to argue, for example, that the prior art "teaches away" from the claimed invention (*see* MPEP § 2145), and the examiner's answer points to portions of that same reference to counter the argument, then the rejection does not constitute a new ground of rejection. In *In re Hedges,* 783 F.2d 1038 (Fed. Cir. 1986), the claimed invention was directed to a process for sulfonating diphenyl sulfone at a temperature above 127° C. *Id.* at 1039. The examiner rejected the claims under § 103 over a single reference. The applicant submitted three additional references as evidence that the prior art teaches away from performing sulfonation above 127° C, citing portions of those references which taught lower temperature reactions. The Board affirmed the rejection, finding the applicant's evidence unpersuasive. On appeal, the Solicitor responded to the applicant's "teaching away" argument by pointing to other portions of those same references which, contrary to applicant's argument, disclosed reactions occurring above 127° C. The court held that this did not constitute a new ground of rejection because "[t]he Solicitor has done no more than search the references of record for disclosures pertinent to the same arguments for which [applicant] cited the references." *Hedges,* 783 F.2d at 1039–40.

Proposed Bd.R. 41.39(b) proposes to revise the current rule to add a paragraph heading. No changes are proposed to Bd.R. 41.39(b)(1). Proposed Bd.R. 41.39(b)(2) does not propose to substantively revise the current rule—the phrase "each new ground of rejection" would be moved to a different location in the sentence in which it currently appears to increase the clarity of the sentence. The Office received a comment stating that the two-month time period for responding to a new ground of rejection is too short to allow appellants to properly respond and that the period should be the same as that afforded to applicants during prosecution (3 months under Rule 1.136(a)). The Office declined to adopt the suggestion to change the current rule because such a change in the time period would increase the overall appeal pendency. The Office notes that appellant can seek extensions of time of this two-month time period under Rule 1.136(b) for patent applications or Rule 1.550(c) for *ex parte* reexamination proceedings.

The Office received another comment stating that the requirement in the rule proposed in 41.39(b)(2) of the ANPRM requiring appellants to file a request to docket the appeal be deleted as it would place an increased burden on appellant. The proposed rule does not propose to change the substance of Bd.R. 41.39(b)(2), which requires appellants to file a reply brief addressing each new ground of rejection in order to maintain the appeal as to the claims subject to the new ground of rejection.

Proposed Bd.R. 41.39(c) proposes to add a paragraph heading to the current rule.

Tolling of Time Period To File a Reply Brief

Proposed Bd.R. 41.40 is proposed to be added to clearly set forth the exclusive procedure for appellant to request review of the primary examiner's failure to designate a rejection as a new ground of rejection via a petition to the Director under Rule 1.181. This procedure should be used if an appellant feels an answer includes a new ground of rejection that has not been designated as such, and wishes to reopen prosecution so that new amendments or evidence may be submitted in response to the rejection. However, if appellant wishes to submit only arguments, the filing of a petition under Rule 1.181 would not be necessary because appellant may submit the arguments in a reply brief.

Proposed Bd.R. 41.40(a) would provide that any such petition under Rule 1.181 would be required to be filed within two months from the entry of the examiner's answer and prior to the filing of a reply brief.

Proposed Bd.R. 41.40(b) would provide that a decision granting such a Rule 1.181 petition would require appellants to file a reply under Rule 1.111 within two months from the date of the decision to reopen prosecution. The appeal would be dismissed if appellant fails to timely file a reply.

Proposed Bd.R. 41.40(c) would provide that a decision refusing to grant such a Rule 1.181 petition would allow appellants a two-month time period in which to file a single reply brief under Proposed Bd.R. 41.41.

Proposed Bd.R. 41.40(d) would provide that if a reply brief is filed prior to a decision on the Rule 1.181 petition, then the filing of the reply brief would act to withdraw the petition and maintain the appeal. Jurisdiction would pass to the Board upon the filing of the reply brief, and the petition under Rule 1.181 would not be decided on the merits.

Proposed Bd.R. 41.40(e) would provide that the time periods described in this section are not extendable under Rule 1.136(a) and appellant would need to seek any extensions of time under the provisions of Rules 1.136(b) and 1.550(c) for extensions of time to reply for patent applications and *ex parte* reexaminations, respectively.

Proposed Bd.R. 41.40 is designed to address the numerous comments received regarding new grounds of rejection by examiners in answers. This proposed rule clearly explains the proper manner for appellants to address a situation where an appellant believes that an examiner's answer contains an undesignated new ground of rejection. The proposed rule does not create a new right of petition—appellants have always had the opportunity to file a petition under Rule 1.181 if an appellant felt that the examiner's answer contained a new ground of rejection not so designated. This proposed section of the rule merely lays out the process to better enable appellant to address such concerns. The proposed rule also now tolls the time period for filing a reply brief, so appellants can avoid the cost of preparing and filing a reply brief prior to the petition being decided, and can avoid the cost altogether if the petition is granted and prosecution is reopened. Similarly, the tolling provision would spare examiners the burden of having to act on appellants' requests under Rule 1.136(b) for extension of the two-month time period for filing a reply brief while the Rule 1.181 petition is being decided.

Reply Brief

Proposed Bd.R. 41.41(a) proposes to revise the current rule to add a

paragraph heading and to clarify that appellants may file only one reply brief and that such a reply brief must be filed within two months of either the examiner's answer or a decision refusing to grant a petition under Rule 1.181 to designate a new ground of rejection in an examiner's answer.

The ANPRM proposed to amend this rule by explicitly stating that the rule allows for only a single reply brief. The Office received no comments directed to this proposed change and has thus adopted it in these proposed rules.

Proposed Bd.R. 41.41(b) proposes to add a paragraph heading and subsections to the current rule and to delete the current provision that a reply brief which is not in compliance with the provisions of the remainder of proposed Bd.R. 41.41 will not be considered by the Board. Specifically, proposed paragraph (b)(1) prohibits a reply brief from including new or non-admitted amendments or evidence, which is the same language as current Bd.R. 41.41(a)(2). The Office received one comment suggesting that appellants should be allowed to rely on new evidence in a reply brief. The Office declined to adopt this suggestion because it is important that the Board have the benefit of the examiner's initial evaluation of any evidence relied upon by appellants prior to the Board deciding any issues pertaining to the relevance and weight to be given to such evidence in deciding the issues on appeal.

Proposed Bd.R. 41.41(b)(2) would provide that any arguments which were not raised in the appeal brief or are not made in response to arguments raised in the answer would not be considered by the Board, absent a showing of good cause.

The ANPRM proposed amending the rule to limit reply briefs to responding to points made in the examiner's answer and to disallow new arguments that were not made previously in the appeal brief and are not responsive to the answer. The Office received a few comments suggesting that new arguments should be allowed in reply briefs to address new arguments and issues presented in the answer—as well as to address new grounds of rejection. The proposed rule allows new arguments in the reply brief that are responsive to arguments raised in the examiner's answer, including any designated new ground of rejection. *See* Proposed Bd.R. 41.41(b)(2)(ii).

The Office also received a few comments suggesting that there be a limited option to raise additional arguments or to revise arguments in a reply brief to address intervening changes in the law. The Office agrees that an intervening change in the law, if pertinent to the issues before the Board, is "good cause" for allowing new or revised arguments to be raised in a reply brief. Proposed paragraph (b)(2) provides a "good cause" exception to the rule against raising new arguments.

The Office received a comment that any requirement for appellants to identify any new, versus previously presented, arguments would be difficult to enforce and would lead to disputes about what is "new." The proposed rule contains no requirement for appellants to identify new arguments.

The ANPRM proposed certain additional formatting requirements for reply briefs. The Office received a comment requesting that these formatting requirements be removed from the proposed rule. The proposed rule in this NPRM contains none of these specific formatting requirements for reply briefs.

Proposed Bd.R. 41.41(c) proposes to add a paragraph heading to the current rule.

Examiner's Response to Reply Brief

The proposed rule would delete Bd.R. 41.43.

The ANPRM proposed to delete Bd.R. 41.43, which currently requires the examiner to acknowledge reply briefs and allows examiners to file supplemental answers. The Office received one comment in favor of removing the section of the rule and no comments opposed to this proposed change. In keeping with the ANPRM, the proposed rule would delete Bd.R. 41.43 in its entirety.

Oral Hearing

Proposed Bd.R. 41.47 proposes removing references to the supplemental examiner's answer in paragraphs (b) and (e)(1), as the proposed rules do not allow for supplemental examiner's answers. The proposed rule would further revise paragraph (b) to change the time period in which a request for oral hearing is due to take into account the potential for the time period for filing a reply brief to be tolled under Proposed Bd.R. 41.40.

The ANPRM proposed several changes to this section of the rules. The Office did not receive any comments to these proposed changes. Despite no opposition to the changes proposed in the ANPRM, in an effort to avoid changing the current rule except where necessary, the current rule was used as the basis for the proposed changes to this section in this NPRM.

Decisions and Other Actions by the Board

Proposed Bd.R. 41.50(a) proposes to revise the current rule by: Adding a paragraph heading; deleting the subsection separation in Bd.R. 41.50(a)(1) and (2); deleting the provision allowing the Board to remand applications to the examiner; and deleting the provision allowing an examiner to write a supplemental examiner's answer in response to a remand by the Board for further consideration of a rejection. This proposed rule would not provide for the Board, under its independent authority, to remand an application to the examiner. The proposed rule would retain the portion of current rule which provides a mechanism for the Director to order an application remanded under Bd.R. 41.35(c). The Director has the option to delegate this remand power as appropriate.

The ANPRM proposed to revise the current rule so that only the Chief Administrative Patent Judge had the authority to remand an application to the examiner. The Office received a wide range of comments regarding this proposed modification, some comments in direct contradiction with others. Two comments expressed the view that the Chief Administrative Patent Judge should not have sole authority over merits remands. However, another comment expressed the opposite view that allowing the Chief Administrative Patent Judge to issue remand orders would improve the appellate process before the Board. Another comment expressed the view that the Board should issue remands sparingly. Yet another comment expressed the distinct view that the remand power is an important tool for the Board to require an examiner to correct errors and that it promotes efficiency at the Board by freeing judges from doing the job of the examiner and allows the examiner to correct errors based on oversight. The comment further notes that if the panel could no longer remand an application, it would require the Board to force decisions into either an affirmance or reversal and would negatively impact the quality of the Board decisions. However, another comment was in favor of the proposed change, noting that the Board has used its remand power to avoid deciding cases on the merits and instead remanded cases to the examiner. The Office agrees with some of the comments noting that remands should be used sparingly. The Office's position is that Director-ordered remands would be used in most instances to correct errors in the appeal that prevent the

Board from otherwise deciding the issues before it. The Board would decide the issues before it based on the rejections as presented by the examiner and the arguments made by appellant. This proposed rule would lead to more compact prosecution because it would provide an incentive for examiners to fully explain and articulate the rejections earlier in the prosecution.

Proposed Bd.R. 41.50(b) proposes to add a paragraph heading to the current rule. Additionally, Proposed Bd.R. 41.50(b) would revise the current rule to clarify the language in the rule allowing the Board to enter a new ground of rejection. The proposed rule also proposes to revise the language in paragraph (b)(1) to clarify the language and to make it consistent with other modifications in the proposed rule (*i.e.,* deleting the reference to the Board remanding the matter to the examiner). Proposed Bd.R. 41.50(b)(2) proposes to revise the current rule to reference the definition of "Record" provided in Proposed Bd.R. 41.30.

Bd.R. 41.50 provides the Board with the authority to enter a new ground of rejection. The Office received a comment to the ANPRM in favor of allowing the Board to enter a new ground of rejection in a decision. The Office received other comments, however, opposing the Board's authority to enter a new ground of rejection. In order for the Board to protect the public from the issuance of claims that have been foreclosed by intervening changes in law, and to shape the law on patentability in areas not yet addressed by the Federal Circuit, the Office determined that the Board should retain its authority to enter new grounds of rejection. Additionally, this authority to enter a new ground is important in situations where the Board's articulation of its reasons for sustaining a rejection goes beyond the thrust of the examiner's articulation of the rejection, such that appellant has not had a fair opportunity to respond to the reasoning. In such cases, the Board would designate its decision as containing a new ground of rejection to give appellants an opportunity to respond.

The Office received two comments requesting that the time frame for responding to a new ground of rejection raised in a decision be changed to three months. As discussed *supra,* in the interest of avoiding an increase in appeal pendency, the Office did not adopt this suggestion. The concerns raised in the comments are understood. However, the proposed rule retains the two-month response time frame in the interest of ensuring that the appeal proceeds expeditiously and efficiently. The Office notes that the rule provides for extensions of time to respond under Rule 1.136(b) for patent applications and Rule 1.550(c) for *ex parte* reexamination proceedings. *See* Proposed Bd.R. 41.50(d).

The Office also received a comment requesting that appellants be given the option to submit new arguments, evidence, and amendments to the Board in response to a new ground of rejection. The proposed rule allows appellants to submit new arguments in response to a designated new ground of rejection in a request for rehearing without reopening prosecution. *See* Proposed Bd.R. 41.52(a)(3). As in the current rule, the proposed rule requires appellants to reopen prosecution to introduce new amendments or evidence. The current rule is retained in this regard because the examiner, with his/her subject matter expertise, should be the first to review new amendments and/or evidence submitted in an application, prior to the Board's appellate-level review.

Proposed Bd.R. 41.50(c) proposes to revise the current rule to remove the Board's power to suggest how a claim may be amended to overcome a rejection and proposes to add new language to the rule explaining the procedure by which appellants can seek review of a panel's failure to designate a decision as containing a new ground of rejection. The proposed rule provides that review of decisions which appellants believe contain a new ground of rejection should be requested through a request for rehearing consistent with the provisions of Proposed Bd.R. 41.52.

The Office received a comment to the ANPRM that appellants should be afforded the right to respond to new grounds of rejection presented in decisions from the Board regardless of whether they are designated as such. To address this concern, the proposed rule allows appellants to respond to new grounds, whether or not designated as such, in a request for rehearing. Proposed Bd.R. 41.52(a)(3) allows for new arguments in a request for rehearing responding to a new ground of rejection designated as such, and Proposed Bd.R. 41.52(a)(4) allows for new arguments in a request for rehearing to argue that the Board's decision contains an undesignated new ground of rejection. If such a request for rehearing under Proposed Bd.R. 41.52(a)(4) is granted, then the Board would modify its original decision to designate the decision as containing a new ground of rejection under Proposed Bd.R. 41.50(b) and provide appellants with the option to either reopen prosecution under Proposed Bd.R. 41.50(b)(1) or request rehearing on the merits of the designated new ground of rejection under Proposed Bd.R. 41.50(b)(2).

Proposed Bd.R. 41.50(d) proposes to revise the current rule to add a paragraph heading, and to delete the "non-extendable" limitation on the response time period which appears in the current rule. The Office received a comment at the roundtable discussion held on January 20, 2010, questioning why this time period was not extendable and noting that appellants may have good cause to show why additional time might be needed. The proposed rule, by removing the "non-extendable" limitation from the rule, now allows appellants to seek extensions of time under Rule 1.136(b) for patent applications and Rule 1.550(c) for *ex parte* reexamination proceedings. The Office received another comment to the ANPRM asserting that the ability of the Board to allow evidence to be submitted under Proposed Bd.R. 41.50(d) is not consistent with the prohibition in Proposed Bd.R. 41.33 prohibiting submission of additional evidence. The Office determined that it was important to retain this authority to seek additional briefing and information from appellants in those rare cases where the Board felt such additional briefing and information would help the Board provide a more informed decision.

The proposed rule proposes to delete current Bd.R. 41.50(e) consistent with the change in Proposed Bd.R. 41.50(a), as the Board would no longer remand cases under this provision.

Proposed Bd.R. 41.50(e) would contain the language of current Bd.R. 41.50(f) and proposes to add a paragraph heading.

Rehearing

Proposed Bd.R. 41.52(a)(1) proposes to add cross-references to relevant sections of the rule and to revise the current rule to clarify that arguments which are not raised and evidence which was not previously relied upon are not permitted in the request for rehearing, unless consistent with the remainder of Proposed Bd.R. 41.52(a).

Proposed Bd.R. 41.52(a)(2) proposes to delete the requirement of a showing of good cause for appellants to present new arguments based on a recent relevant decision of the Board or the Federal Circuit. This change is proposed because it is the Office's position that a new argument based on a recent relevant decision would inherently make a showing of good cause and thus

the text of the current rule seemed redundant.

Proposed Bd.R. 41.52(a)(3) proposes to revise the current rule to change the word "made" to "designated" to clarify that new arguments are permitted in response to a new ground of rejection designated as such in the Board's opinion.

The proposed rules seek to add Proposed Bd.R. 41.52(a)(4) to make clear that new arguments are permitted in a request for rehearing for appellants seeking to have the Board designate its decision as containing a new ground of rejection that has not been so designated.

The proposed rules would not modify Bd.R. 41.52(b).

The ANPRM proposed barring new arguments in requests for rehearing except in response to a new ground of rejection or a new legal development. The Office received a comment that the rule proposed in the ANPRM barring new arguments was too restrictive in its scope because it did not allow for new arguments in the event that the Board used logic not set forth by the examiner. To address the concerns raised in the comments, Proposed Bd.R. 41.52 has been revised to specifically allow appellants to present new arguments in a request for rehearing when they believe that the Board has made a new ground of rejection that has not been so designated. Additionally, appellants are specifically permitted to make new arguments to respond to a designated new ground of rejection in a request for rehearing.

Action Following Decision

Proposed Bd.R. 41.54 is substantially the same as Bd.R. 41.54, except that the proposed rule proposes to revise the current rule to specifically state that jurisdiction over an application or a patent under *ex parte* reexamination passes to the examiner after a decision on appeal is issued by the Board. This slight revision to the language of the current rule is proposed to incorporate the language of Rule 1.197(a), which would be deleted under the proposed rules. By incorporating the language of Rule 1.197(a) into Proposed Bd.R. 41.54, the rules for passing jurisdiction back to the examiner after decision by the Board would not be substantively changed.

Sanctions

The ANPRM proposed including a new section to the rule to clarify instances in which the Board could impose sanctions on an appellant. The Office received numerous comments opposing the addition of a new section on sanctions. The proposed rule does not include any such section.

Rulemaking Considerations

Executive Order 12866: This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Administrative Procedure Act: The changes in the proposed rule relate solely to the procedure to be followed in filing and prosecuting an *ex parte* appeal to the Board.

Therefore, these rule changes involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Commc'ns, Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are "rules of agency organization, procedure, or practice" and exempt from the Administrative Procedure Act's notice and comment requirement); *Merck & Co.* v. *Kessler,* 80 F.3d 1543, 1549–50 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules to which the notice and comment requirements of the Administrative Procedure Act apply); *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) ("it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice' " (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)).

Because the proposed rule is procedural, it is not required to be published for notice and comment. Nevertheless, the Office is publishing this notice in the **Federal Register** and in the Official Gazette of the United States Patent and Trademark Office in order to solicit public comment before implementing the rule.

Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law. Neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is applicable to this notice of proposed rulemaking. *See* 5 U.S.C. 603.

Nonetheless, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that, for the reasons discussed below, this notice of proposed rulemaking, Rules of Practice Before the Board of Patent Appeals and Interferences in *Ex Parte* Appeals [RIN 0651–AC37], will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b) (Regulatory Flexibility Act).

There are no fee changes associated with the proposed rule. The estimates of economic impact provided below are based on agency expertise in patent prosecution practice.

Claims on Appeal

In those instances where appellants wish to appeal all claims under rejection, which are the majority of appeals, there will be a cost savings. The proposed changes eliminate the requirement for appellants to affirmatively state (in the status of claims section of the appeal brief), all of the claims on appeal. There may be a slight increase in cost, however, to a small subset of appellants who choose not to appeal all of the rejected claims. For this small subset of appellants, the proposed rule would require cancellation of any non-appealed claims by filing an amendment.

The Office estimates that, for those appellants choosing to appeal fewer than all of the rejected claims, this proposed change may result in two hours of attorney time toward the preparation of such an amendment. For purposes of comparison, the 2009 report of the Committee on Economics of Legal Practice of the American Intellectual Property Law Association ("the AIPLA 2009 Report") notes that the median cost for the preparation and filing of a patent application amendment/argument of minimal complexity is $1,850. Using the AIPLA 2009 Report's median billing rate for attorneys in private firms of $325 per hour, this cost equates to approximately 5.7 hours of attorney time. The Office's estimate of two hours of attorney time ($650) for an amendment merely canceling claims is based on the fact that such an amendment will not contain an argument section, unlike a regular patent application amendment/argument. As such, the Office estimates that the amendment to cancel claims will be significantly less time-consuming than a regular patent application amendment/argument.

Based on the Office's experience, it estimates that such an amendment canceling claims will only be filed in approximately 1% of appeals. The Board decided *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) in May 2008. Of the approximately 2,056 reported Board decisions and orders issued in the remainder of FY 2008, only ten such

decisions and orders cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. In FY 2009 (October 2008–September 2009), of the approximately 5,612 reported Board decisions and orders, only twenty cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. In FY 2010 (October 2009–September 2010), of the approximately 5,990 reported Board decisions and orders, only twenty-six cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. While these numbers may not represent a precise indication of the numbers of appeals where appellants chose not to appeal all of the rejected claims, these figures are provided as an indication of the relatively small number of appeals in which appellants choose to appeal fewer than all of the rejected claims without canceling such unappealed claims prior to appeal. Based on this data, the Office found that approximately 0.41% of all appeals had *Ghuman* issues, *i.e.,* where fewer than all of the rejected claims were appealed. For purposes of calculating additional cost to appellants from this proposed rule change, the Office rounded up to 1% and used this as a conservative (high) estimate for the number of amendments expected. As such, this proposed rule change will not have a significant economic impact on a substantial number of small entities.

Additionally, for the majority of appellants this proposed change will likely result in cost savings. Because the current rule allows appellants to appeal fewer than all of the claims under rejection, the current rule also requires appellants to affirmatively state (in the status of claims section of the appeal brief), all of the claims on appeal. Under this proposed rule, the Board would presume that appellants intend to appeal all claims under rejection unless those claims under rejection for which review is not sought are canceled. This proposed change to the rule allows the Office to eliminate the current requirement for appellants to identify the claims on appeal in the appeal brief. Thus, in those instances where appellants wish to appeal all claims under rejection, which represents the majority of appeals, the appellant's burden is lessened by not having to include a listing of the status of all of the claims under rejection.

Changes to Appeal Brief Requirements

The Office also estimates a net cost savings to all appellants as a result of the proposed changes to the appeal brief requirements. In particular, the Office estimates a savings due to the proposed elimination of certain appeal brief requirements and proposed changes to other requirements to make them more flexible. The Office estimates a small increase in cost to the subset of appellants who choose to argue claims separately or as a subgroup.

For the subset of appellants who choose to argue claims separately or as a subgroup, the small increase in cost would merely be the addition of subheadings before separately argued claims or subgroups. The Office estimates this added burden may increase the time it takes to prepare an appeal brief by 0.2 hours for those appellants who choose to separately argue claims. This estimate is based on the Office's view of the time it would take to add subheadings based on agency expertise in patent prosecution practice. The estimated small increase in cost would not apply to all appeal briefs because some appellants choose to argue all of the claims rejected under a ground of rejection as a single group. However, since the Office does not track the number of appeals in which appellants argue all claims as a single group versus the number of appeals in which appellants argue some claims separately, the Office has applied this increase to the estimate of all appeal briefs filed. Nevertheless, this proposed change will not have a significant economic impact on a substantial number of small entities.

Notably, the overall proposed changes to the appeal brief requirements will result in net savings to appellants. By allowing for more flexibility in how an appellant chooses to present an appeal to the Board and by eliminating many current appeal brief requirements, appellants will incur less cost overall in preparation of appeal briefs. As discussed *infra* in the Paperwork Reduction Act section of the notice, the Office estimates a net average savings in preparation time under the proposed rule of three hours of attorney time as compared to the previous estimate under the current rule. This estimate is based on the Office's view of the net time saved in preparation of an appeal brief as a result of the proposed changes based on agency expertise in patent prosecution practice. As such, the overall average attorney time and cost it will take to prepare an appeal brief under the proposed rule will be reduced from 34 hours ($11,050) to 31 hours ($10,075). Using the median billing rate of $325 per hour, as published in the AIPLA 2009 Report, the Office estimates that these proposed rule changes will result in an average savings of $975 per appeal brief. This savings will apply equally to large and small entities.

Accordingly, any costs related to the filing of an amendment canceling claims and the addition of subheadings to an appeal brief will not have a significant economic impact on a substantial number of small entities. Moreover, proposed changes to the rule, as a whole, will likely result in a net cost savings to an appellant and, therefore, also not have a significant economic impact on a substantial number of small entities.

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

Executive Order 13132: This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Paperwork Reduction Act: This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information in the rule have been reviewed and previously approved by OMB under control numbers 0651–0031 and 0651–0063.

As stated above in the Regulatory Flexibility Act section of this notice, while the majority of the changes to the rule being proposed will either have no impact on or will lessen the burden to the public as compared to the collection of information previously approved by OMB, the Office has identified two proposed changes that may, in certain circumstances, increase the burden to the public.

Specifically, the Office has estimated that the proposed change to Bd.R. 41.31(c) will impose an increased burden of two hours time to a small subset of appellants (1%) who choose not to seek review of all claims under rejection by requiring such appellants to file an amendment canceling any unappealed claims, or otherwise have the Board treat all rejected claims as being on appeal. Additionally, the Office estimated that the proposed change to the briefing requirements in Bd.R. 41.37(c)(1)(vii) (requiring appellants to place any claim(s) argued separately or as a subgroup under a separate subheading that identifies the

claim(s) by number) would result in 0.2 hours of added time for those appellants who choose to separately argue their claims. The estimates are based on the Office's expertise in patent prosecution practice. This increase in burden hours would not apply to all appeal briefs because some appellants choose to argue all of the claims rejected under a ground of rejection as a single group. However, since the Office does not track the number of appeals in which appellants argue all claims as a single group versus the number of appeals in which appellants argue some claims separately, for purposes of estimating the overall burden, the Office has applied this 0.2 hour increase to the estimate of all appeal briefs filed.

The Office has also specifically identified below at least eleven proposed changes that will lessen the burden to the public as compared to the current rule.

1. The proposed change to Bd.R. 41.12(b) lessens the burden on appellant by removing the current requirement for appellant to include parallel citations (Bd.R. 41.12(a)(2)–(3)) to both the West Reporter System and to the United States Patents Quarterly for any decision other than a United States Supreme Court decision, and further lessens the burden on appellant by no longer requiring citation to a particular reporter.

2. The proposed change to Bd.R. 41.37(c)(1)(i) lessens the burden on appellant because it provides for a default in the event that this item is omitted from the brief, such that the appellant is not required to include this section in the brief if the inventors are the real party in interest.

3. The proposed change to Bd.R. 41.37(c)(1)(ii) lessens the burden on appellant because it: (a) Limits the duty to provide information as to only those related cases that involve an application or patent co-owned by appellant or assignee; (b) provides a default assumption in the event that this item is omitted from the brief so that appellants are no longer required to make a statement that "there are no such related cases"; and (c) no longer requires filing of copies of decisions in related proceedings.

4. The proposed change to Bd.R. 41.37(c)(1)(iii) lessens the burden on appellant by eliminating the requirement to identify the status of claims in the appeal brief.

5. The proposed change to Bd.R. 41.37(c)(1)(iv) lessens the burden on appellant by lessening the required disclosure from a statement of the status of any amendments to simply an identification of the filing date of the last-entered amendment. This proposed change further lessens the burden on appellant by providing a default assumption of no such amendments in the event that this item is omitted from the brief, such that the appellant is not required to include this section in the brief in the event that no amendments were made to the claims.

6. The proposed change to Bd.R. 41.37(c)(1)(v) lessens the burden on appellant by limiting the summary of the claimed subject matter to require annotation only for "each limitation in dispute by appellant." The proposed rule provides more flexibility than the current rule by allowing citation to paragraph number (instead of limiting citation to page and line number). The proposed rule similarly limits the requirement for a § 112, ¶ 6 summary to only those recitations "in dispute by appellant." The proposed change also clarifies the current Office policy, which does not allow reference to the patent application publication in the summary of claim subject matter. Since improper reference to the patent application publication is a current cause of defective briefs, this rule change is proposed to reduce confusion.

7. The proposed change to Bd.R. 41.37(c)(1)(vi) lessens the burden on appellant by eliminating the requirement that appellant state the grounds of rejection to be reviewed on appeal in the appeal brief. The Board would look to documents already of Record (*i.e.,* the Office action from which the appeal is taken and any subsequent Advisory Action or Pre-Appeal Conference Decision) to determine the grounds of rejection on appeal.

8. The proposed change to Bd.R. 41.37(c)(1)(vii) lessens the burden on appellant by allowing appellant's headings to "reasonably identify the ground being contested (*e.g.,* by claim number, statutory basis, and applied reference, if any)." The current rule has occasionally been interpreted as a verbatim requirement and resulted in briefs being found defective for failure to state the ground of rejection in the heading exactly the same as stated in the Office action from which the appeal was taken. The proposed rule clarifies that this is not a verbatim requirement and allows more flexibility in the brief.

9. The proposed change to Bd.R. 41.37(c)(1)(viii) lessens the burden on appellant by eliminating the requirement for appellants to file a claims appendix containing a copy of claims on appeal. The Board would look to the last-entered amendment in the Record to identify the claims on appeal.

10. The proposed change to Bd.R. 41.37(c)(1)(ix) lessens the burden on appellant by eliminating the requirement for appellant to file an evidence appendix containing copies of evidence relied upon. The Board would look to the Record to obtain copies of the evidence relied upon in the briefs.

11. The proposed change to Bd.R. 41.37(c)(1)(x) lessens the burden on appellant by eliminating the requirement for appellant to file a related proceedings appendix containing copies of decisions in related proceedings. The Board would look to the records in the Office and other publicly available sources to locate and review decisions rendered in any related proceedings.

In the approved information collection [OMB Control Number 0651–0063], the Office estimated the average appeal brief took 34 hours to prepare. In light of the proposed changes to the current rule for briefing requirements for filing appeal briefs, and taking into account the eleven proposed changes that will lessen the burden and the one proposed change (i.e., addition of subheadings) that will add a burden, the agency estimates that the proposed changes to the current rule will result in a net average decrease of approximately 3 hours per appeal brief from the prior estimate, thereby lowering the previous average estimate of approximately 34 hours to 31 hours to prepare an appeal brief. This estimate is based on the net impact of the proposed changes and time saved in preparation of an appeal brief based on agency expertise in patent prosecution practice. Using the median billing rate of $325 per hour, as published in the AIPLA 2009 Report, the Office estimates that these proposed rule changes will result in an average savings of $975 per appeal brief.

The Office notes that the number and significance of these proposed changes effecting a lessening of the burden to appellants substantially outweigh the proposed changes that may result, in certain circumstances, in increased burden to appellants. The Office will submit an information collection package to OMB for its review and approval.

Interested persons are requested to send comments regarding this information collection, including suggestions for reduction of this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Patent and Trademark Office; and (2) The Board of Patent Appeals and

Interferences, P.O. Box 1451, Alexandria, VA 22313–1451, *Attention:* Linda Horner.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small Businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office proposes to amend 37 CFR parts 1 and 41 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Amend § 1.197 by revising the section heading and removing and reserving paragraph (a).

The revision reads as follows:

§ 1.197 Termination of proceedings.

* * * * *

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

3. Revise the authority citation for part 41 to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.

Subpart A—General Provisions

4. Revise § 41.12 to read as follows:

§ 41.12 Citation of authority.

(a) For any United States Supreme Court decision, citation to the United States Reports is preferred.

(b) For any decision other than a United States Supreme Court decision, citation to the West Reporter System is preferred.

(c) Citations to authority must include pinpoint citations whenever a specific holding or portion of an authority is invoked.

(d) Non-binding authority should be used sparingly. If the authority is not an authority of the Office and is not reproduced in the United States Reports or the West Reporter System, a copy of the authority should be provided.

Subpart B—Ex parte Appeals

5. Amend § 41.30 by adding a definition for "record" in alphabetical order to read as follows:

§ 41.30 Definitions.

* * * * *

Record means the items listed in the content listing of the image file wrapper of the official file of the application or reexamination proceeding on appeal, excluding amendments, evidence, and other documents that were denied entry.

6. Amend § 41.31 by revising paragraphs (a) introductory text, (b) and (c) to read as follows:

§ 41.31 Appeal to Board.

(a) *Who may appeal and how to file an appeal.* An appeal is taken to the Board by filing a notice of appeal.

* * * * *

(b) The signature requirements of §§ 1.33 and 11.18(a) of this title do not apply to a notice of appeal filed under this section.

(c) An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed pursuant to §§ 1.121, 1.173, or 1.530 of this title. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

* * * * *

7. Amend § 41.33 by revising paragraphs (c) and (d)(2) to read as follows:

§ 41.33 Amendments and affidavits or other evidence after appeal.

* * * * *

(c) All other amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1) and 41.50(b)(1).

(d) * * *

(2) All other affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1) and 41.50(b)(1).

6. Revise § 41.35 to read as follows:

§ 41.35 Jurisdiction over appeal.

(a) *Beginning of jurisdiction.* Jurisdiction over the proceeding passes to the Board upon the filing of a reply brief under § 41.41 or the expiration of the time in which to file such a reply brief, whichever is earlier.

(b) *End of jurisdiction.* The jurisdiction of the Board ends when:

(1) The Director enters a remand order (*See* § 41.35(c)),

(2) The Board enters a final decision (*See* § 41.2 of this part) and judicial review is sought or the time for seeking judicial review has expired,

(3) An express abandonment which complies with § 1.138 of this title is recognized,

(4) A request for continued examination is filed which complies with § 1.114 of this title,

(5) Appellant fails to take any required action under §§ 41.39(b), 41.50(b), or 41.50(d), and the Board enters an order of dismissal, or

(6) Appellant reopens prosecution in response to a new ground of rejection entered in a decision of the Board (*See* § 41.50(b)(1)).

(c) *Remand ordered by the Director.* Prior to the entry of a decision on the appeal by the Board (*See* § 41.50), the Director may sua sponte order the proceeding remanded to the examiner.

(d) *Documents filed during Board's jurisdiction.* Except for petitions authorized by this part, consideration of any information disclosure statement or petition filed while the Board possesses jurisdiction over the proceeding will be held in abeyance until the Board's jurisdiction ends.

8. Amend § 41.37 by:

a. Adding headings to paragraphs (a) introductory text, (b), (d) and (e);

b. Revising paragraphs (c)(1);

c. Revising the second sentences in paragraphs (c)(2) and (d); and

d. Adding a new third sentence to paragraph (c)(2) and paragraph (d).

The revisions and additions read as follows:

§ 41.37 Appeal brief.

(a) *Timing and fee.* * * *

(b) *Failure to file a brief.* * * *

(c) *Content of appeal brief.* (1) Except as otherwise provided in this paragraph, the brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (vii) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i), (ii), and (vii) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in

interest at the time the appeal brief is filed, except that such statement is not required if the named inventor or inventors are themselves the real party in interest. If an appeal brief does not contain a statement of the real party in interest, the Office may assume that the named inventor or inventors are the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings (collectively, "related cases") which satisfy all of the following conditions: Involve an application or patent owned by the appellant or assignee, are known to appellant, the appellant's legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, except that such statement is not required if there are no such related cases. If an appeal brief does not contain a statement of related cases, the Office may assume that there are no such related cases.

(iii) [Reserved].

(iv) *Statement of last entered amendment.* A statement identifying by date of filing the last entered amendment of the claims. If an appeal brief does not contain a statement of last entered amendment, the Office may assume that there are no amendments of the claims.

(v) *Summary of claimed subject matter.* An annotated copy of each of the rejected independent claims, which shall, for each limitation in dispute by appellant, immediately after each such limitation, refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters, sufficient to understand the claim. For each rejected independent claim, and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, if the claim contains a means plus function or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph, then the annotated copy must identify, for every means plus function and step plus function recitation in dispute by appellant, the structure, material, or acts described in the specification in the Record as corresponding to each claimed function with reference to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. Reference to the patent application publication does not satisfy the requirements of this paragraph.

(vi) [Reserved].

(vii) *Argument.* The arguments of appellant with respect to each ground of rejection, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the Record relied on. The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant. Except as provided for in §§ 41.41, 41.47 and 41.52, any arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal. Each ground of rejection contested by appellant must be argued under a separate heading, and each heading shall reasonably identify the ground of rejection being contested (*e.g.,* by claim number, statutory basis, and applied reference, if any). For each ground of rejection applying to two or more claims, the claims may be argued separately (claims are considered by appellants as separately patentable), as a group (all claims subject to the ground of rejection stand or fall together), or as a subgroup (a subset of the claims subject to the ground of rejection stand or fall together). When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Under each heading identifying the ground of rejection being contested, any claim(s) argued separately or as a subgroup shall be argued under a separate subheading that identifies the claim(s) by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(2) * * * *See* § 1.116 of this title for treatment of amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for treatment of amendments, affidavits or other evidence filed after the date of filing the appeal. Review of an examiner's refusal to admit an amendment or evidence is by petition to the Director. *See* § 1.181.

(d) *Notice of non-compliance.* * * * If appellant does not, within the set time period, file an amended brief that overcomes all the reasons for non-compliance stated in the notification, the appeal will stand dismissed. Review of a determination of non-compliance is by petition to the Chief Judge. *See* § 41.3.

(e) *Extensions of Time.* * * *

9. Amend § 41.39 by revising paragraph (a); adding a heading to paragraph (b) introductory text; revising the second sentence of paragraph (b)(2); and adding a heading to paragraph (c) to read as follows:

§ 41.39 Examiner's answer.

(a) *Content of examiner's answer.* The primary examiner may, within such time as may be directed by the Director, furnish a written answer to the appeal brief.

(1) An examiner's answer is deemed to incorporate all of the grounds of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory action and pre-appeal brief conference decision), unless the examiner's answer expressly indicates that a ground of rejection has been withdrawn.

(2) An examiner's answer may include a new ground of rejection. For purposes of the examiner's answer, any rejection that relies upon any new evidence not relied upon in the Office action from which the appeal is taken (as modified by any advisory action) shall be designated by the primary examiner as a new ground of rejection. An examiner's answer that includes a new ground of rejection must be approved by the Director.

(b) *Appellant's response to new ground of rejection.* * * *

* * * * *

(2) * * * Such a reply brief must address as set forth in § 41.37(c)(1)(vii) each new ground of rejection and should follow the other requirements of a brief as set forth in § 41.37(c). * * *

(c) *Extensions of time.* * * *

10. Add § 41.40 to read as follows:

§ 41.40 Tolling of time period to file a reply brief.

(a) *Timing.* Any request to seek review of the primary examiner's failure to designate a rejection as a new ground of rejection in an examiner's answer must be by way of a petition to the Director under § 1.181 filed within two months from the entry of the examiner's answer and before the filing of any reply brief. Failure of appellant to timely file such a petition will constitute a waiver of any arguments that a rejection must be designated as a new ground of rejection.

(b) *Petition granted and prosecution reopened.* A decision granting a petition under § 1.181 to designate a new ground of rejection in an examiner's answer will provide a two-month time period in

which appellant must file a reply under § 1.111 of this title to reopen the prosecution before the primary examiner. On failure to timely file a reply under § 1.111, the appeal will stand dismissed.

(c) *Petition not granted and appeal maintained.* A decision refusing to grant a petition under § 1.181 to designate a new ground of rejection in an examiner's answer will provide a two-month time period in which appellant may file only a single reply brief under § 41.41.

(d) *Withdrawal of petition and appeal maintained.* If a reply brief under § 41.41 is filed within two months from the date of the examiner's answer and on or after the filing of a petition under § 1.181 to designate a new ground of rejection in an examiner's answer, but before a decision on the petition, the reply brief will be treated as a request to withdraw the petition and to maintain the appeal.

(e) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

11. Amend § 41.41 by revising paragraphs (a) and (b) and adding a heading to paragraph (c) to read as follows:

§ 41.41 Reply brief.

(a) *Timing.* Appellant may file only a single reply brief to an examiner's answer within two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 to designate a new ground of rejection in an examiner's answer.

(b) *Content.* (1) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. *See* § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(2) Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown.

(c) *Extensions of time.* * * *

§ 41.43 [Removed]

12. Remove § 41.43.

13. Amend § 41.47 by revising paragraph (b) and revising the last sentence of paragraph (e)(1) to read as follows:

§ 41.47 Oral hearing.

* * * * *

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or on the date of filing of a reply brief, whichever is earlier.

* * * * *

(e)(1) * * * The primary examiner may only rely on argument and evidence relied upon in an answer except as permitted by paragraph (e)(2) of this section.

* * * * *

14. Revise § 41.50 to read as follows:

§ 41.50 Decisions and other actions by the Board.

(a) *Affirmance and reversal.* The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) *New ground of rejection.* Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, and designate such a statement as a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be reopened before the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

(c) *Review of undesignated new ground of rejection.* Any request to seek review of a panel's failure to designate a new ground of rejection in its decision must be raised by filing a request for rehearing as set forth in § 41.52. Failure of appellant to timely file such a request for rehearing will constitute a waiver of any arguments that a decision contains an undesignated new ground of rejection.

(d) *Request for briefing and information.* The Board may order appellant to additionally brief any matter that the Board considers to be of assistance in reaching a reasoned decision on the pending appeal. Appellant will be given a time period within which to respond to such an order. Failure to timely comply with the order may result in the sua sponte dismissal of the appeal.

(e) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

15. Amend § 41.52 by revising the fourth sentence of paragraph (a)(1), paragraphs (a)(2) and (3), and adding paragraph (a)(4) to read as follows:

§ 41.52 Rehearing.

(a)(1) * * * Arguments not raised, and evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (4) of this section. * * *

(2) Appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(3) New arguments responding to a new ground of rejection designated pursuant to § 41.50(b) are permitted.

(4) New arguments that the Board's decision contains an undesignated new ground of rejection are permitted.

* * * * *

16. Revise § 41.54 to read as follows:

§ 41.54 Action following decision.

After decision by the Board, jurisdiction over an application or patent under *ex parte* reexamination proceeding passes to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application or patent under *ex parte* reexamination proceeding may require, to carry into effect the decision.

Dated: October 21, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–28493 Filed 11–12–10; 8:45 am]

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