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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 and Nutrition Service

7 CFR Parts 271 and 272

RIN 0584–AD89

Supplemental Nutrition Assistance Program: Civil Rights Protections for SNAP Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending Supplemental Nutrition Assistance Program (SNAP) regulations that secure civil rights protections for SNAP households and applicants. The nondiscretionary change complies with an amendment made to the Food, Conservation, and Energy Act of 2008 which specifically enumerates four statutory protections that must be complied with by State agencies in administering SNAP. This nondiscretionary change to the regulations is not expected to have an implementation impact on SNAP State agencies, as they have been subject to such statutes for several years.

DATES: *Effective Date:* This is effective June 13, 2011.

Implementation Date: State agencies must implement the provisions of this rule no later than June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Chief, State Administration Branch, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302, 703–605–4385, and *Jane.Duffield@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated non-significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This final rule does not impose any additional or unnecessary and disproportionately burdensome demands upon small governmental jurisdictions with limited resources.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program (SNAP) is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), SNAP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

This rulemaking is not expected to have an impact on State agencies. State agencies have had to comply with the Americans with Disabilities Act (ADA) (42 U.S.C. 12101) provisions ever since enactment in 1990, over 20 years ago. Current provisions in 7 CFR 272.6 prohibiting discrimination on the basis of handicap has been in effect for over 10 years. Further, State agencies have long had to comply with SNAP regulations that prohibit discrimination on the basis of disability. Accordingly, we anticipate that this rulemaking will not require new State agency implementation action. Therefore, there are no additional requirements on State and local agencies requiring prior consultation with State officials. State agencies will need to continue to consider any accessibility issues that may arise regarding disabled participants or applicants before making changes to SNAP administration or launching any new initiative. State agencies should continue to self-evaluate their administration of SNAP to ensure service to all eligible people with disabilities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

This rule will not in any way limit or reduce the ability of protected classes of individuals. Executive Order 12250 delegates the approval of rules based on the Civil Rights Act to the Attorney General. This rule has been reviewed by the Department of Justice (DOJ). There is no pertinent information as to the result of the DOJ review.

Section 4117 of the Food, Conservation, and Energy Act of 2008 (FCEA) amended Section 11(c) of the Food and Nutrition Act of 2008, 7 U.S.C. 202(c), to provide that the administration of SNAP by a State agency shall be consistent with the rights of households under the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.,* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* and title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* As amended, Section 11(c) of the Food and Nutrition Act provides statutory clarification that civil rights protections provided in the specified statutes apply to persons with disabilities who seek to participate in SNAP.

The SNAP administration by State agencies is already subject to all four of these civil rights laws. SNAP regulations at 7 CFR 272.6(a) specify three of the four civil rights laws. However, 7 CFR 272.6(a) does not currently include the Americans with Disabilities Act of 1990. Current rules at 7 CFR 272.6(a) do prohibit discrimination in the certification of households, the issuance of benefits, the conduct of fair hearings, or the conduct of any program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. USDA has also promulgated general, department-wide civil rights regulations at 7 CFR 15b, which also protect the civil rights of persons with disabilities.

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101) was signed into law on July 26, 1990. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by public entities including State and local governments. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments.

The ADA requires a public entity to make reasonable accommodations to allow participants with disabilities to participate in the program. If the public entity can demonstrate that a particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites. An example of reasonable accommodations may include access ramps for people who use wheelchairs to access buildings.

Since the inception of the program, SNAP State agencies have always served the disabled. In FY 2007, SNAP served a monthly average of 2.8 million households containing disabled nonelderly people. Households with disabled nonelderly people represented 24 percent of all SNAP households and received an average monthly SNAP benefit of $148. About 57 percent of SNAP households with disabled nonelderly people were single-person households.

Households may file SNAP applications by submitting the form to the SNAP office in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application in States where available. As of September 2010, a total of 26 States allow applicants to apply online and additional States are working on systems that will allow applicants to apply by computer.

Communication between the caseworker and the applicant is an important part of the SNAP application process. The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided that the household is cooperating with the State agency. As part of the application process, the household completes and signs the application form, the household or its authorized representative is interviewed by the State agency, and certain information on the application must be verified to determine eligibility.

Examples of reasonable accommodation in the application process may include qualified sign language interpreters and written materials for individuals with hearing impairments. Other examples may include qualified readers and Brailed or large print materials for individuals with vision impairments.

SNAP requires an interview for every initial certification and for recertification, at least once every 12 months. The interview would be face-to-face unless FNS waives the requirement to document the hardship to the household, or the State agency determines individually that the face-to-face aspect would be a hardship under 7 CFR 273.2(e)(2). FNS has not established strict guidelines about what this hardship would be, preferring to allow State agencies a degree of flexibility in determining household hardship situations. As provided in the regulations, these situations include, but are not limited to, illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in the in-office interview. The State agency must document the case file to show when a waiver was granted because of hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview to all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household that requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

SNAP benefits are issued in the form of electronic benefit transfer (EBT), which is essentially a system that uses a SNAP debit card for use in authorized

retail food stores to purchase eligible food for the household's consumption. Written materials and/or other information, including the specific rights to benefits in an EBT system, must be provided for households with disabilities. State agencies are required to provide training for all EBT users and especially for persons with disabilities. In addition, in accordance with SNAP regulations at 7 CFR 274.8(b)(vi)(4)(G), EBT systems used by State agencies are required to provide reasonable accommodation for the needs of households with disabilities in keeping with the ADA. With the household's permission, an authorized household representative may use the household's EBT card to purchase eligible food for the household.

As the first step, FNS encourages clients with disabilities to share any accessibility concerns on applying for and receiving SNAP benefits they may have with the State agencies. The State agency is in the best position to consider the client's concern and make timely and reasonable accommodations to serve the household. For example while the face-to-face interview may be conducted at the local SNAP office, it may also be conducted at another mutually acceptable location, including a household's residence. If the household's accessibility concerns are not promptly addressed, individuals may file a written complaint with the Secretary or the Administrator, FNS, Washington, DC 20250. FNS is committed to ensuring that all eligible persons can participate in SNAP.

FNS wishes to note that there are differences in the definitions for disability and disabled between the ADA and SNAP regulations and that they are used for different purposes. Under the ADA, a *disability* is defined as a physical or mental impairment that substantially limits one or more of an individual's major life activities, having a record of such impairment, or being regarded as having such an impairment. The ADA disability definition is used to identify qualified individuals with disabilities which would then be followed by any necessary and reasonable modification of physical barriers or processes that may have the unintended impact of inadvertently screening out people with disabilities.

However, under SNAP regulations, *disabled* is defined as a household member who receives disability benefits under the Social Security Act or receives certain other disability payments specified in 7 CFR 271.2. The SNAP *disabled* definition is used in making the SNAP eligibility determination and benefit calculation. Specifically, the elderly and disabled are potentially eligible for higher benefits in SNAP that are not available to the nonelderly and the non-disabled with the same income and excess medical expenses. SNAP regulations at 7 CFR 273.9(d)(3) provide for the deduction from income of the excess medical deduction which would be that portion of medical expenses exceeding $35 per month. This deduction is made for the calculation of the household's income on which the SNAP benefit will be based. This deduction provides additional assistance to the elderly or disabled who have higher medical bills and thus would have less household funds available to purchase food and pay for other necessities. The lower income calculation based on the higher deduction for higher medical costs produces higher SNAP benefits for the elderly or disabled.

The eligibility and benefit rules for SNAP also contain other provisions that benefit the disabled but do not apply to other households. These include but are not limited to allowing disabled recipients who receive SSI to be categorically eligible for SNAP, imposing no cap on the shelter deduction for the disabled, and imposing no gross income limit for the disabled. The disabled who cannot prepare their own meals can, under certain circumstances, be a separate household, along with a spouse.

For purposes of making reasonable accommodations to allow participants with disabilities to apply for the program and receive program services, State agencies are to use the ADA *disability* definition. However, the SNAP *disabled* definition in 7 CFR 271.2 will continue to apply to the eligibility and benefit determination for SNAP applicants.

FNS wishes to point out that in directing State agencies to use the ADA disability definition for purposes of making reasonable accommodation, it is not our intent to diminish other State agency procedures and initiatives to serve applicants, including the disabled. For example, the State agency is not limited to the ADA disability definition when considering hardship for waiving the face-to-face interview. A State agency may continue to waive the face-to-face interview for a reason that is not included in the ADA disability definition. Thus, the use of the ADA definition of disability for purposes of making a decision on reasonable accommodation is not intended to reduce in any way the services to disabled or other households that the State agencies now routinely provide under current FNS regulations, including services in hardship situations determined under 7 CFR 273.2(e)(2).

Outreach and Communication to Minorities, Women, and Persons With Disabilities

State agencies receiving financial assistance under the SNAP program must provide to FNS a written assurance that SNAP will be operated in compliance with USDA and FNS nondiscrimination laws, regulations, instructions, policies, and guidelines. The FNS Regional Offices (RO) obtain written assurance of nondiscrimination compliance from each State agency and ensure that State agencies are obtaining assurance from local agencies or other sub-recipients that receive Federal financial assistance for compliance. Civil rights assurance is governed by SNAP regulations at 7 CFR 272.6(a).

Under FNS Instruction 113–1, Part XI, civil rights training is required so that all involved in all levels of administration of programs that received Federal financial assistance understand civil rights related laws, regulations, procedures and directives. This training is part of the technical assistance to the State agencies, and the FNS ROs are responsible for providing such training. Specific training includes: Collection and use of data; effective public notification systems; complaint procedures; compliance review techniques; resolution of noncompliance; requirements for reasonable accommodation of persons with disabilities; requirements for language assistance; conflict resolution; and customer service.

FNS also requires each RO Office of Civil Rights to conduct on-going civil rights compliance reviews in its respective States. Under 7 CFR part 275, the State agencies are also required to conduct a civil rights review annually for large project areas, every 2 years for medium project areas, and 3 years for small project areas. There are no additional outreach efforts regarding this final rule. Removing the word "handicap" and adding in its place the word "disability" will not have a disadvantageous effect on the protected groups.

Summary and Conclusion

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to

soften the effect on any of the protected classes regarding those provisions of the rule. Removing the word "handicap" and adding in its place the word "disability" will not affect the protected groups, but is technical in nature. The term "disability" is consistent with the statutory mandate of the ADA.

Executive Order 13175

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Implementation

In accordance with Section 11(c) of the Food and Nutrition Act of 2008, as amended by Section 4117 of the FCEA, the Department is amending 7 CFR 272.6(a) specifically to provide that State agency administration of the program must be consistent with the Americans with Disabilities Act (42 U.S.C. 12101). The Department is also making a change in terminology to update a section of SNAP regulations. The current provision in 7 CFR 272.6 prohibits discrimination on the basis of "handicap." The prohibition of discrimination on the basis of handicap originated in the Rehabilitation Act of 1973, which preceded enactment of the ADA. However, the ADA uses the term "disability" and most SNAP regulations use the term "disabled." Accordingly, FNS is amending 7 CFR 272.6 to replace the term "handicap" as a prohibited basis for discrimination with the term "disability" to conform to the terminology in the ADA. We are making a similar change in terminology in 7 CFR 271.6(a), which provides that civil rights complaints under all the listed bases are to be handled in accordance with 7 CFR 272.6.

Finally, the Department is making one additional change in terminology in this section of the regulations. The current 7 CFR 272.6 refers to the issuance of "coupons" as one program activity. Section 825 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended Section 7(i) of what is now the Food and Nutrition Act of 2008, 7 U.S.C. 2016(i), to mandate that all States must convert from paper coupon systems to an EBT system. By fiscal year 2004, all State agencies had converted to EBT. Accordingly, the Department is using this opportunity to amend 7 CFR 272.6(a) where it refers to the issuance of coupons to replace the term "coupons" with the term "benefits."

This rule is effective June 13, 2011. The ADA requirements were effective by law on January 26, 1992. The current provision in 7 CFR 272.6 prohibiting discrimination on the basis of handicap has been in effect for over 10 years. Accordingly, this rule reflects the statutory provision and the terminology change consistent with the ADA.

List of Subjects

7 CFR Part 271

Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 272

Alaska, Civil rights, Claims, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

For the reasons set forth in the preamble, 7 CFR parts 271 and 272 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 271.6 [Amended]

■ 2. In § 271.6, in paragraph (a)(1), the second sentence is amended by removing the word "handicap" and adding in its place the word "disability".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 3. The authority citation for part 272.1 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 272.6 [Amended]

■ 4. In § 272.6, paragraph (a) is amended by removing the word "handicap" in the first sentence and adding in its place the word "disability" and in the second sentence by adding the words "Americans with Disabilities Act of 1990 (42 U.S.C. 12101)" immediately following the words "the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504)".

Dated: May 3, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–11419 Filed 5–11–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

19 CFR Part 4

[CBP Dec. 11–10]

Technical Corrections To Remove Obsolete References to Non-Automated Carriers From Electronic Cargo Manifest Regulations and to Update Terminology

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations concerning the

mandatory electronic transmission of inward foreign manifests for vessels transporting bulk and certain break bulk cargo to the United States to make several technical corrections, including removing obsolete language that refers to vessel carriers who do not transmit cargo declaration information electronically (non-automated carriers). When CBP amended its regulations to implement section 343(a) of the Trade Act of 2002 to require carriers to transmit advance cargo information electronically, CBP inadvertently neglected to remove language in the cargo manifest regulations that referred to non-automated bulk and break bulk vessel carriers. This document also makes technical changes to related provisions to clarify the process for electronically transmitting cargo declarations to CBP and to clarify and update terminology.

DATES: *Effective Date:* May 12, 2011.

FOR FURTHER INFORMATION CONTACT: George McCray, Chief, Cargo Security, Carriers, and Immigration Branch, Regulations & Rulings, Office of International Trade: (202) 325–0082; Leslie Bianchi, Commercial Vessel Program Manager, Manifest and Conveyance Branch, Office of Field Operations: (202) 344–2575.

SUPPLEMENTARY INFORMATION:

Background

Applicable Law

Under 19 U.S.C. 1431, vessel carriers are required to submit to CBP information concerning cargo they are transporting to the United States. Under 19 U.S.C. 1431(d), CBP is authorized to specify the form for, and the information required in, the vessel manifest, as well as the manner of production for, and the delivery of or electronic transmittal of, the vessel manifest. In the aftermath of the terrorist attacks of September 11, 2001, Congress passed the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933, enacted on August 6, 2002; 19 U.S.C. 2071 note), which, as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064, enacted on November 25, 2002), requires, in section 343(a), that CBP (then, the U.S. Customs Service) promulgate regulations to collect cargo information from any mode of commercial carrier (sea, air, rail, or truck) through a CBP-approved electronic data interchange system. The CBP-approved electronic data interchange (transmission) system is the Automated Manifest System (AMS). The information required is that which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

Existing Regulatory Requirements Under Previous Rulemakings

On October 31, 2002, CBP (then, the U.S. Customs Service) published a final rule (2002 final rule) in the **Federal Register** (67 FR 66318) amending 19 CFR 4.7 pertaining to vessel manifests to require the advance filing of cargo information, electronically or manually, no later than 24 hours prior to the cargo's lading onboard the vessel at the foreign port (the "24-hours before lading" filing requirement). The 2002 final rule exempted from the "24-hours before lading" filing requirement carriers of bulk cargo and certain carriers of break bulk cargo whose applications for the exemption are approved by CBP (sometimes referred to as CBP-approved break bulk carriers).[1] The 2002 final rule required bulk and CBP-approved break bulk carriers who transmit cargo declaration information electronically (automated carriers) to make these transmissions 24 hours before the vessel's arrival in the United States (at the U.S. port) and non-automated bulk and CBP-approved break bulk carriers to present cargo declarations upon the vessel's arrival at the U.S. port.[2] The 2002 final rule was based primarily on CBP's long-established general authority under 19 U.S.C. 1431 to prescribe rules concerning information required, and the manner of providing that information, relative to imported cargo.[3]

On December 5, 2003, CBP published a final rule (2003 final rule) in the **Federal Register** (68 FR 68140) further amending 19 CFR 4.7 to implement section 343(a) of the Trade Act of 2002 which requires CBP to collect, in advance of arrival in or departure from the United States, cargo information from any mode of commercial carrier (sea, air, rail, or truck) through the CBP-approved electronic data interchange system. The 2003 final rule retained the general timing requirements for the transmission of the cargo information (generally 24 hours prior to lading at the foreign port), including the exemption from this requirement for bulk and CBP-approved break bulk carriers.

Explanation of Amendments

Technical Correction to Remove Obsolete Language Pertaining to Non-Automated Bulk and Break Bulk Carriers

When CBP amended its regulations in 2003 to implement section 343(a) of the Trade Act of 2002, CBP intended to require all carriers to transmit cargo information to CBP electronically. However, CBP neglected to remove language in 19 CFR 4.7(b)(4) referring to non-automated bulk and break bulk vessel carriers. Thus, contrary to the Trade Act of 2002 and the intent of the 2003 final rule, the current regulation still provides that these bulk and break bulk carriers may be non-automated.[4]

In order to conform the regulation to the statute's mandatory electronic transmission requirement for all carriers, this technical correction removes the obsolete reference to non-automated carriers from 19 CFR 4.7(b)(4). This change will have no practical effect since there are no longer any non-automated carriers. All carriers, including bulk and break bulk carriers, have been filing cargo information electronically since at least 2004.

Technical Corrections to Clarify Electronic Procedures for Bulk and CBP-Approved Break Bulk Cargo and to Update Texts

This technical correction document also makes several other changes to the regulations related to the electronic transmission of vessel cargo information to clarify the process and to update terminology. First, various changes reflecting that "Customs" is now known as "CBP" are made throughout the affected provisions. Second, CBP is

[1] Under the CBP regulations, bulk cargo is defined as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping, or articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like (19 CFR 4.7(b)(4)(i)). Break bulk cargo is defined in the regulations as cargo that is not containerized but which is otherwise packaged or bundled (19 CFR 4.7(b)(4)(ii)). Break bulk cargo is exempted from the 24-hours before lading filing requirement of 19 CFR 4.7(b)(2) upon approval by CBP under 19 CFR 4.7(b)(4)(ii).

[2] The current regulation provides that these carriers must "present their cargo declarations" to Customs (now CBP) either 24 hours prior to arrival (electronically) or upon arrival (manually), as appropriate.

[3] In the preamble of the 2002 final rule, CBP noted section 343(a) of the Trade Act of 2002, then recently passed into law, and stated that it co-exists with 19 U.S.C. 1431 within the body of customs law and that a subsequent rulemaking would specifically address the section 343(a) provisions.

[4] The preamble to the 2003 final rule indicates CBP's intention that the mandatory electronic transmission requirement applies to bulk and CBP-approved break bulk carriers. In the discussion of comments section of that rule, CBP states that bulk and authorized break bulk carriers will be subject to the electronic transmission requirement under the rule (68 FR 68145).

adding the word "electronic" in the heading for 19 CFR 4.7. Third, CBP is adding language to 19 CFR 4.7(b)(2) to make clear that any change to a new electronic data interchange system approved by CBP to replace the AMS system for transmitting cargo information under this section will be announced in the **Federal Register**. This addition is made in anticipation of the eventual change from AMS to the Automated Commercial Environment (ACE) system or to any other CBP-approved system that might follow for this purpose in the future.

Fourth, several provisions in 19 CFR part 4 improperly use the term "cargo manifest," "manifest," or something similar to refer to the "cargo declaration." The cargo declaration is only one of several documents that comprise the manifest (see 19 CFR 4.7a). To alleviate confusion, and because "cargo declaration" (CBP Form 1302) is the correct term, CBP is substituting "cargo declaration" or something similar where appropriate. These changes are made in 19 CFR 4.7(b)(3)(i), (b)(4)(ii)(A), 4.7(e), 4.7a(c)(2)(iii), 4.7a(c)(4), 4.7a(f), and 4.30(n) (as further explained below).

Fifth, a few provisions in 19 CFR part 4 reference the general cargo declaration transmission time requirement of 19 CFR 4.7(b)(2) without also referencing the alternative transmission time requirement for exempted bulk and CBP-approved break bulk carriers in 19 CFR 4.7(b)(4). This is corrected in 19 CFR 4.7a(c)(4)(xv) and 4.8(b).

Sixth, in 19 CFR 4.7(b)(4)(i), CBP is removing the first sentence as it is redundant text. The sentence generally repeats what is stated in the first sentence of current 19 CFR 4.7(b)(4)—that carriers of bulk cargo are exempted with respect to that cargo from the 24 hours before lading filing requirement of 19 CFR 4.7(b)(2).

Seventh, CBP is revising 19 CFR 4.30(n), pertaining to CBP's withholding or delaying the issuance of a permit to unlade due to the failure to transmit required cargo information. This provision is outdated because it provides the option of presenting the cargo information in paper form. In the revised paragraph (n), CBP also is adding references to 19 CFR 4.7(b)(4) to make it clear that CBP may withhold or delay the issuance of a permit to unlade, or deny preliminary entry, for failure to transmit required cargo information, whether the information is due within the time frame specified in 19 CFR 4.7(b)(2) or (b)(4).

Inapplicability of Notice and Delayed Effective Date Requirements

Because the technical corrections set forth in this document merely conform the regulatory text to existing law, clarify the text of existing regulations, and update terminology, 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 Analyses

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

The amendments made in this document do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Signing Authority

The signing authority for the amendments of this final rule falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his/her delegate).

List of Subjects in 19 CFR part 4

Customs duties and inspection, Freight, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons set forth in the preamble, part 4 of title 19, Code of Federal Regulations (19 CFR part 4) is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and specific authority citations for § 4.7, 4.8, and 4.30 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 4.7 also issued under 19 U.S.C. 1581(a);

* * * * *

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

■ 2. Section 4.7 is amended by:

■ a. Revising the heading;

■ b. In paragraph (a), removing the words "Customs Form" wherever they appear and adding in their place the words "CBP Form" and removing the words "Customs and Immigration Form" wherever they appear and adding in their place the words "CBP Form";

■ c. In paragraph (b)(1), removing the words "Customs officer" and adding in their place the words "CBP officer";

■ d. In paragraph (b)(2), removing the words "Customs Form" and adding in their place the words "CBP Form", removing the reference to "§ 4.30(n)(1)" and adding in its place "§ 4.30(n)", and removing the last sentence and adding in its place two new sentences;

■ e. Revising paragraph (b)(3)(i);

■ f. Revising the introductory text in paragraph (b)(4);

■ g. In paragraph (b)(4)(i), removing the first sentence;

■ h. In paragraph (b)(4)(ii)(A), in the first sentence, removing the words "U.S. Customs Service" and adding in their place the words "U.S. Customs and Border Protection"; in the second sentence, removing the words "advance manifest requirement" and adding in their place the words "advance cargo declaration requirement"; and, in the third sentence, removing the word "Customs" and adding in its place "CBP"

■ i. In paragraphs (b)(4)(ii)(B) and (C), removing the word "Customs" wherever it appears and adding in its place "CBP";

■ j. In paragraph (d)(1)(ii), removing the words "Customs Form 226" wherever they appear and adding in their place the words "CBP Form 226"; and

■ k. In paragraph (e), in the second sentence, removing the words "cargo manifest information to Customs" and adding in their place the words "cargo declaration information to CBP" and removing the words "manifest or data to Customs" and adding in their place the words "cargo declaration or data to CBP".

The revisions read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance electronic filing of cargo declaration.

* * * * *

(b) * * *

(2) * * * The electronic cargo declaration information must be transmitted through the CBP Automated Manifest System (AMS) or any electronic data interchange system approved by CBP to replace the AMS system for this purpose. Any such system change will be announced by notice in the Federal Register.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in

paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo declaration information directly to CBP through the vessel AMS system (or other system approved by CBP for this purpose). The information must be received 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter), as provided in paragraph (b)(2) of this section, or in accordance with paragraph (b)(4) of this section applicable to exempted bulk and break bulk cargo. In the alternative, the NVOCC must fully disclose and present the required cargo declaration information for the related cargo to the vessel carrier which is required to present this information to CBP, in accordance with this section, via the vessel AMS system (or other CBP-approved system).

* * * * *

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt, with respect only to the bulk or break bulk cargo being transported, from the requirement set forth in paragraph (b)(2) of this section that an electronic cargo declaration be received by CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. With respect to exempted carriers of bulk or break bulk cargo operating voyages to the United States, CBP must receive the electronic cargo declaration covering the bulk or break bulk cargo they are transporting 24 hours prior to the vessel's arrival in the United States (*see* § 4.30(n)). However, for any containerized or non-qualifying break bulk cargo these exempted carriers will be transporting, CBP must receive the electronic cargo declaration 24 hours in advance of loading.

* * * * *

§ 4.7a [Amended]

■ 3. Section 4.7a is amended by:

■ a. In paragraph (a), removing the words "Customs Form" and adding in their place the words "CBP Form";

■ b. In paragraph (b), removing the words "Customs Form" wherever they appear and adding in their place the words "CBP Form" and removing the words "Customs and Immigration Form I–418" and adding in their place the words "CBP Form I–418", and, in the certification language, removing the word "Customs" and adding in its place "CBP";

■ c. In paragraph (c)(1), removing from the first parenthetical in the first sentence the words "Customs Form 1302 or a Customs-approved electronic equivalent" and adding in their place the words "CBP Form 1302 submitted in accordance with paragraph (b)(2) or (b)(4) of this section";

■ d. In paragraph (c)(2)(ii), removing the words "Customs Form" wherever they appear and adding in their place the words "CBP Form";

■ e. In paragraph (c)(2)(iii), removing the word "Customs" wherever it appears and adding in its place "CBP" and, in the next to last sentence, removing the words "discrepancies between manifests and entries" and adding in their place the words "discrepancies between cargo declarations and entries";

■ f. In paragraph (c)(3) introductory text, removing the word "Customs" and adding in its place "CBP";

■ g. In paragraph (c)(4) introductory text, removing the words "cargo manifest information" and adding in their place the words "cargo declaration information" and removing the words ", either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent,";

■ h. In paragraph (c)(4)(xv) introductory text, in the second parenthetical, which is within the first parenthetical, after the reference to § 4.7(b)(2), adding "or § 4.7(b)(4)" and, in paragraph (c)(4)(xv)(B), removing the words "Customs Form (CF) 3171 and adding in their place the words "CBP Form 3171";

■ i. In paragraph (d), removing the words "the Immigration and Naturalization Service, United States Department of Justice" and adding in their place the words "applicable Department of Homeland Security (DHS) regulations administered by CBP";

■ j. In paragraph (e)(1), removing the words "the Immigration and Naturalization Service, United States Department of Justice" and adding in their place the words "applicable DHS regulations administered by CBP" and, in the certification language, removing the word "Customs" wherever it appears and adding in its place "CBP"; and

■ k. In paragraph (f), second sentence, removing the words "cargo manifest information to Customs" and adding in their place the words "cargo declaration information to CBP".

§ 4.8 [Amended]

■ 4. Section 4.8 is amended by:

■ a. In paragraph (a), removing the words "the Customs Service" and adding in their place the words "Customs and Border Protection (CBP)"; and

■ b. In paragraph (b), removing the word "Customs" wherever it appears and adding in its place "CBP"; in the second sentence, removing "(CF)"; removing the words "in the manner provided in § 4.7(b)(2)" and the words "in the manner provided in § 4.7(b)" and adding in both places the words "in the manner provided in § 4.7(b)(2) or (4)"; and, in the fourth and fifth sentences, removing "CF" and adding in its place the words "CBP Form".

■ 5. In § 4.30, paragraph (n) is revised to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(n) CBP will not issue a permit to unlade before it has received the cargo declaration information pursuant to § 4.7(b)(2) or (4) of this part. In cases in which CBP does not receive complete cargo declaration information from the carrier or a NVOCC in the manner, format, and time frame required by § 4.7(b)(2) or (4), as appropriate, CBP may delay issuance of the permit to unlade the entire vessel until all required information is received. CBP may also decline to issue a permit to unlade the specific cargo for which a cargo declaration is not received in a timely manner under § 4.7(b)(2) or (4). Further, where a carrier does not transmit a cargo declaration in the manner required by § 4.7(b)(2) or (4), preliminary entry pursuant to § 4.8(b) will be denied.

Dated: May 4, 2011.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–11248 Filed 5–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9521]

RIN 1545–BG54

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document describes corrections to final regulations (TD 9521) that were published in the Federal Register on Thursday, April 7, 2011, providing guidance relating to the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code.

DATES: This correction is effective on May 12, 2011, and is applicable on April 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 904 of the Internal Revenue Code.

Need for Correction

As published on Thursday, April 7, 2011 (76 FR 19268), final regulations (TD 9521) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9521) which were the subject of FR Doc. 2011–8229 is corrected as follows:

1. On page 19268, column 2, in the preamble, under the paragraph heading "*II. Losses in and Losses With Respect to the Pre-2007 Separate Category for High Withholding Tax Interest*", line 9 from the last paragraph of the column, the language "7T(g)(ii)) that offset U.S. source income" is corrected to read "7T(g)(1)(ii)) that offset U.S. source income".

2. On page 19269, column 1, in the preamble, under the paragraph heading "*II. Losses in and Losses With Respect to the Pre-2007 Separate Category for High Withholding Tax Interest*", the last sentence of first paragraph of the column, the language "The regulations have also been revised to clarify that, in the case of a financial services entity, to the extent an SLL in the post-2006 separate category for general category income is recaptured as income in the post-2006 separate category for passive category income, the amount that would otherwise be recaptured as passive income (as opposed to specified passive category income) will be recaptured as general category income." is removed.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–11580 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0142; FRL–9304–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Large Appliance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for large appliance coatings. These amendments will reduce emissions of volatile organic compound (VOC) emissions from large appliance coating facilities. Therefore, this revision will help Maryland attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on July 11, 2011 without further notice, unless EPA receives adverse written comment by June 13, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0142, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *fernandez.cristina@epa.gov.*

C. Mail: EPA–R03–OAR–2011–0142, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0142. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of

the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 15, 2010, MDE submitted to EPA SIP revision concerning the adoption of the EPA CTG for large appliance coatings.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." (44 FR 53761, Sept. 17, 1979). In subsequent **Federal Register** notices, EPA has addressed how states can meet the RACT requirements of the CAA.

The CTG for large appliance coatings is intended to provide State and local air pollution control authorities information that should assist them in determining RACT for VOC from large appliance coatings. In developing this CTG, EPA evaluated the sources of VOC emissions from the large appliance coating industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provides recommendations for RACT for large appliance coating.

In December 1977, EPA published a final CTG for large appliance coatings, entitled "Control of Volatile Organic Emissions from Existing Stationary Sources, Volume V, Surface Coating of Large Appliances," EPA–450/2–77–034 (December 1977). In October 1982, EPA promulgated national standards of performance for new stationary sources (NSPS) for large appliances (40 CFR part 60, subpart SS). The 1982 NSPS requires VOC emissions limits based on VOC content of low VOC coating materials. In July 2002, EPA promulgated a national emission standard for hazardous air pollutants (NESHAP) for these industries large appliances (40 CFR part 63, subpart NNNN). The 2002 NESHAP establishes national emission standards for hazardous air pollutants (HAP) for large appliance surface coating facilities and emissions limits based on the organic HAP content of low organic HAP coating materials.

In 2006 and 2007, after conducting a review of currently existing state and local VOC emission reduction approaches for these industries, reviewing the 1977/1978 CTGs and the NESHAPs for these industries, and taking into account the information that has become available since then, EPA developed new CTGs for: Surface coating of large appliances, entitled "Control Techniques Guidelines for Large Appliance Coatings," EPA 453/R–07–004 (September 2007).

Large appliance coatings include, but are not limited to, materials referred to as paint, topcoats, basecoats, primers, enamels, and adhesives used in the manufacture of large appliance parts or products. A large appliance part is defined as any organic surface-coated metal lid, door, casing, panel, or other interior or exterior part or accessory that is assembled to form a large appliance product. A large appliance product is also defined as any organic surface-coated metal range, oven, microwave, refrigerator, freezer, washer, dryer, dishwasher, water heater, or trash compactor manufactured for household, commercial, or recreational use. There are several approaches to reducing VOC emissions from large appliance coatings: (1) Emission limits that can be achieved through the use of low-VOC coatings, (2) equivalent emission limits that can be achieved through the use of low-VOC coatings or a combination of coatings and add-on controls, (3) an overall control efficiency of 90 percent for add-on controls, and (4) the implementation of work practice standards.

II. Summary of SIP Revision

On December 15, 2010, MDE submitted to EPA a SIP revision (#10–09) concerning the adoption of the EPA CTG for large appliance coatings. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. MDE is adopting the more restrictive 2.3 pounds/gallon (lbs/gal) standard for large appliance coatings (see EPA–450/2–78–034, June 1978). This SIP revision amends Regulation .06—Large Appliance Coatings under COMAR 26.11.19—Volatile Organic Compounds from Specific Processes. This action affects sources that coat doors, cases, lids, panels, or other interior or exterior part or accessory of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, ovens, microwave ovens, and other similar products.

Regulation COMAR 26.11.19.06—Control of Volatile Organic Compounds Emissions from Large Appliance Coatings includes under section .06A the definition for large appliance coatings. Under section .06B, it also includes the coating standard requirements for large appliance coatings. These standards require that any person who uses a large appliance coating installation may not cause or permit the discharge into the atmosphere of any VOC from a large appliance coating installation in excess of 2.3 lbs/gal of coating applied (excluding water) (0.275 kg/l of coating applied (excluding water)); shall use control equipment to achieve an overall VOC emissions reduction of 90 percent or greater from the large appliance coating installation at the affected facility; and use one or more of the following application methods: (a) Electrostatic application; (b) high volume/low pressure (HVLP) spray; (c) Flow coat; (d) Roller coat; (e) Dip coat including electrodeposition; (f) Brush coat; or (g) other coating application method that has a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

III. Final Action

EPA is approving the Maryland SIP revision that adopts the CTG standards for large appliance coatings. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 11, 2011 without further notice unless EPA receives adverse comment by June 13, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action pertaining to Maryland's adoption of the CTG standards for large appliance coatings may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 26, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising an entry for COMAR 26.11.19.06 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
* *	*	*	* *	*
26.11.19	**Volatile Organic Compounds from Specific Processes**			
* *	*	*	* *	*
26.11.19.06	Large Appliance Coating	10/1/10	5/12/11 [Insert page number where the document begins].	
* *	*	*	* *	*

* * * * *

[FR Doc. 2011–11557 Filed 5–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0906; FRL–9278–9]

Revisions to the California State Implementation Plan, California Air Resources Board—Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the California Air Resources Board portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on November 16, 2010 and concern volatile organic compound (VOC) emissions from consumer products. We are approving a State rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on June 13, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0906 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On November 16, 2010 (75 FR 69910), EPA proposed to approve the following rule into the California SIP.

Regulation	Regulation title	Amended	Submitted
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 2—Consumer Products	05/05/09	02/16/10

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the general public regarding cap and trade regulations. The submitted comment is not germane to this action as amendments to California's Consumer Products regulation deal with limiting the VOC content of products and does not deal with cap and trade programs.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 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 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 28, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(383) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(383) New and amended regulations were submitted on February 16, 2010, by the Governor's designee.

(i) Incorporation by Reference.

(A) California Air Resources Board.

(*1*) Executive Order R–08–016, dated May 5, 2009.

(*2*) "Final Regulation Order, Regulation for Reducing Emissions from Consumer Products," California Code of Regulations, Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 8.5 (Consumer Products), Article 2 (Consumer Products), amendment filed 6–18–2009, operative 7–18–2009.

* * * * *

[FR Doc. 2011–11438 Filed 5–11–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 76, No. 92
Thursday, May 12, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0470; Directorate Identifier 2010–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series 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:

One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. * * * Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.

* * * * *

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 June 27, 2011.

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., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@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: Fabio Buttitta, 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) 228–7303; 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–2011–0470; Directorate Identifier 2010–NM–190–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–23, dated July 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. Investigation determined that the tread on the outboard tire was catching on the bumper plate located on the outboard MLG door that prevented the MLG door to open following an extension attempt via the alternate extension system. Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.

To prevent the potential jam condition between the bumper plate and the MLG tires, Bombardier Aerospace has developed a modification to trim the edge of the bumper plate to eliminate the possibility of interference [Bombardier Modsum 4–113645].

The Modsum includes performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part with a new part, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–32–74, Revision A, dated May 17, 2010. 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 65 products of U.S. registry. We also estimate that it would take about 8 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 $479 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 $75,335, or $1,159 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–2011–0470; Directorate Identifier 2010–NM–190–AD.

Comments Due Date

(a) We must receive comments by June 27, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, having serial numbers 4001 through 4247 inclusive.

Subject

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

Reason

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

One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. * * * Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.

* * * * *

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 2,000 flight hours after the effective date of this AD: Incorporate Bombardier Modsum 4–113645, including performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010. Do all applicable replacements before further flight.

(h) For airplanes on which a bumper plate having part number 85424082–101 or 85424082–103 is installed that has been reworked in accordance with Bombardier Repair Drawing 8/4–54–553: Within 1,000 flight hours after the effective date of this AD, reidentify the bumper plate, in accordance with paragraph 3.B., step (8) of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010.

Note 1: Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010, includes an operational check of the alternate extension system of the MLG. If the check fails, guidance on doing corrective actions can be found in the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Incorporation of Bombardier Modsum 4–113645 before the effective date of this AD in accordance with Bombardier Service Bulletin 84–32–74, dated December 23, 2009, is considered acceptable for compliance with the modification in paragraph (h) of this AD, provided the action in paragraph (h) of this AD is done within the compliance time specified in paragraph (h) of this AD.

FAA AD Differences

Note 2: 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, 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it 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.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2010–23, dated July 21, 2010; Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010; for related information.

Issued in Renton, Washington, on May 5, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11604 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0471; Directorate Identifier 2010–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series 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:

Several operators have reported pitch oscillations and/or elevator asymmetry caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the driving crank arms. This condition, if left uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

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 June 27, 2011.

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., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@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: Cathy Nguyen-Quoc, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7323; 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–2011–0471; Directorate Identifier 2010–NM–219–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–27, dated August 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Several operators have reported pitch oscillations and/or elevator asymmetry caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the driving crank arms. This condition, if left uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

Required actions include doing an inspection for the part number of the left and right elevator torque tube assemblies and, if necessary, replacing the elevator torque tube assembly or replacing the elevator torque tube rivets, and re-identifying the assemblies. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier Inc., has issued Service Bulletin 84–27–50, Revision C, dated July 26, 2010. 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 66 products of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 × $85 per hour = $170	None	$170	$11,220

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace left torque tube	15 work-hours × $85 per hour = $1,275	$4,354	$5,629
Replace right torque tube	15 work-hours × $85 per hour = $1,275	5,913	7,188

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–2011–0471; Directorate Identifier 2010–NM–219–AD.

Comments Due Date

(a) We must receive comments by June 27, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 through 4305 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

Several operators have reported pitch oscillations and/or elevator asymmetry

caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the driving crank arms. This condition, if left uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

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 for Part Number

(g) At the applicable times identified in paragraphs (g)(1) and (g)(2) of this AD, do an inspection to determine the part numbers of the left and right elevator torque tubes, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the left and right elevator torque tubes can be conclusively determined from that review.

(1) For airplanes that have accumulated 8,000 or more total flight hours as of the effective date of this AD: Within 2,000 flight hours after the effective date of this AD.

(2) For airplanes that have accumulated less than 8,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD, but before the accumulation of 10,000 total flight hours.

Corrective Actions

(h) If, as a result of the inspection required by paragraph (g) of this AD, any left elevator torque tube has part number (P/N) 82760709–009, at the applicable time in paragraph (g)(1) or (g)(2) of this AD, do the actions in paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the elevator torque tube with a new elevator torque tube having P/N 82760709–011, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010.

(2) Replace the rivets in each elevator torque tube assembly with Hi Lite pins having P/N B0206001AG8 and collars having P/N HST1070CY, and re-identify the elevator torque tube assembly having P/N 82760709–009, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010.

(i) If, as a result of the inspection required by paragraph (g) of this AD, any right elevator torque tube has P/N 82760757–009, at the applicable time in paragraph (g)(1) or (g)(2) of this AD, do the actions in paragraph (i)(1) or (i)(2) of this AD.

(1) Replace the elevator torque tube with a new elevator torque tube having P/N 82760757–011, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010.

(2) Replace the rivets in each elevator torque tube assembly with Hi Lite pins having P/N B0206001AG8 and collars having P/N HST1070CY, and re-identify the elevator torque tube assembly having P/N 82760757–009, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions done before the effective date of this AD, in accordance with the service bulletins listed in table 1 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Service Bulletin	Revision	Date
Bombardier Service Bulletin 84–27–50	Original	March 3, 2010.
Bombardier Service Bulletin 84–27–50	A	April 28, 2010.
Bombardier Service Bulletin 84–27–50	B	May 19, 2010.

Parts Installation

(k) As of the effective date of this AD, no person may install on any airplane an elevator torque tube assembly having P/N 82760709–009 or 82760757–009.

FAA AD Differences

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

Other FAA AD Provisions

(l) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2010–27, dated August 20, 2010; and Bombardier Service Bulletin 84–27–50, Revision C, dated July 26, 2010; for related information.

Issued in Renton, Washington, on May 5, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11605 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0444 Airspace Docket No. 11–AAL–07]

Proposed Revision of Class E Airspace; Talkeetna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Talkeetna, AK. The revision of four Standard Instrument Approach Procedures (SIAPs) and the Obstacle Departure Procedure (ODP) at the Talkeetna Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before June 27, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0444/ Airspace Docket No. 11–AAL–07 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0444/Airspace Docket No. 11–AAL–07." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E2 and E5 airspace at the Talkeetna Airport in Talkeetna, AK, to accommodate the revision of four SIAPs and the ODP at the Talkeetna Airport. This Class E airspace would provide adequate controlled airspace upward from the surface (E2) to 700 feet and 1,200 feet (E5) above the surface, for the safety and management of IFR operations at the Talkeetna Airport.

The Class E2 airspace designated as surface areas and the Class E5 airspace designated as 700/1200 foot transition areas are published in paragraphs 6002 and 6005, respectively, in FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this document would be subsequently published in that Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Talkeetna Airport, Talkeetna, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and

effective September 15, 2010, is to be amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

AAL AK E2 Talkeetna, AK [Revised]

Talkeetna Airport, AK
(Lat. 62°19′14″ N., long. 150°05′37″ W.)
Talkeetna VOR/DME
(Lat. 62°17′55″ N., long. 150°06′38″ W.)

Within a 5-mile radius of the Talkeetna Airport and within 2.5 miles each side of the Talkeetna VOR/DME 191° radial and 1 mile each side of the Talkeetna VOR/DME 207° radial extending from the 5-mile radius to 8.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

AAL AK E5 Talkeetna, AK [Revised]

Talkeetna Airport, AK
(Lat. 62°19′14″ N., long. 150°05′37″ W.)
Talkeetna VOR/DME
(Lat. 62°17′55″ N., long. 150°06′38″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Talkeetna Airport and within 3.2 miles each side of the Talkeetna VOR/DME 191° radial and 2.5 miles each side of the Talkeetna VOR/DME 207° radial extending from the 7.5-mile radius to 12.4 miles southwest of the airport and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Talkeetna Airport.

Issued in Anchorage, AK, on May 3, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–11581 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC97

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On April 28, 2011, the Commodity Futures Trading Commission ("Commission" or "CFTC") published in the **Federal Register** a notice of proposed rulemaking that would establish initial and variation margin requirements for swap dealers (SDs) and major swap participants (MSPs). Elsewhere today in the **Federal Register**, the Commission is proposing to adopt capital, financial reporting, and recordkeeping requirements for these same entities, as well as proposing to amend certain capital requirements for futures commission merchants (FCMs) that also register as SDs or MSPs and supplemental capital requirements, and supplemental financial reporting requirements for these FCMs. The Commission now is extending the comment period for the proposed margin regulations so that the comment period will run concurrently with the comment period for the proposed rulemaking on capital requirements being published today.

DATES: Comments must be received on or before July 11, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AC97, and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method. Additionally, to ease the burden to commenters, you may submit comments that address both the capital and the margin rulemakings to only one of the respective public comment files and they will be considered by the Commission in both rulemakings, if appropriate to both.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulation, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, Thomas Smith, Deputy Director, or Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5480 and electronic mail: *jlawton@cftc.gov; tsmith@cftc.gov;* or *tdiaz@cftc.gov.*

SUPPLEMENTARY INFORMATION: On April 28, 2011 the Commission published in the **Federal Register** a notice of proposed rulemaking that would establish initial and variation margin requirements for swap dealers (SDs) and major swap participants (MSPs). Elsewhere today in the **Federal Register**, the Commission is proposing to adopt capital, financial reporting, and recordkeeping requirements for SDs and MSPs, as well as proposing to amend certain capital requirements for futures commission merchants (FCMs) that also register as SDs or MSPs, as well as supplemental financial reporting requirements for these FCMs.

Because the proposed capital and margin rulemakings are interrelated, the Commission now is extending the comment period for the proposed margin regulations so that the comment periods of each proposed rulemaking will run concurrently. The extension period will provide commenters with a full opportunity to review each of the proposed rulemakings together before commenting on either. As noted above, the Commission additionally has determined to give full consideration to all comments on each of the proposed rulemakings, whether comment letters that address both rulemakings are submitted to the comment file of the capital or the margin rulemaking.

Issued in Washington, DC, this 27th day of April 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Extension of Comment Period—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2011–10880 Filed 5–11–11; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0142; FRL–9304–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Large Appliance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision includes amendments to Maryland's regulation for Volatile Organic Compounds from Specific Processes and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for large appliance coatings. These amendments will reduce emissions of volatile organic compound (VOC) emissions from large appliance coating facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0142, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0142, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0142. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Adoption of Control Techniques Guidelines for Large Appliance Coatings," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 26, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 2011–11558 Filed 5–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0301; FRL–9304–7]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submission from the State of South Dakota to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their

SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of South Dakota submitted a certification of their Infrastructure SIP for the 1997 ozone NAAQS, dated February 1, 2008, which was determined to be complete on March 27, 2008 (73 FR 16205). EPA does not propose to act on the State's February 1, 2008 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission on May 8, 2008 (73 FR 26019).

DATES: Written comments must be received on or before June 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0301, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2010–0301. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);

Follow directions and organize your comments;

Explain why you agree or disagree;

Suggest alternatives and substitute language for your requested changes;

Describe any assumptions and provide any technical information and/or data that you used;

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

Provide specific examples to illustrate your concerns, and suggest alternatives;

Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several "infrastructure elements," listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only certify that fact via a letter to EPA.[1]

On 3/27/08, EPA published a final rulemaking entitled, "Completeness Findings for section 110(a) State Implementation Plans; 8-hour Ozone NAAQS" (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that the State of South Dakota had submitted a complete SIP to meet these requirements.

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (Oct. 2, 2007).

III. What infrastructure elements are required under Section 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D)(ii): Interstate and international pollution.
- 110(a)(2)(E): Adequate resources and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as "nonattainment new source review (NSR)") required under part D, and (ii) section 110(a)(2)(I) pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the "interstate transport" requirements of element 110(a)(2)(D)(i). In a separate action, EPA approved the State's submission to meet the requirements of 110 (a)(2)(D)(i) for the 1997 ozone NAAQS (73 FR 26019).

IV. How did the State of South Dakota address the elements of the infrastructure provisions of Section 110(a)(2)?

1. Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. South Dakota's response to this requirement: The rules in the Administrative Rules of South Dakota (ARSD) Chapter 74:36:04 (Operating permits for minor sources), 74:36:05 (Operating permits for part 70 sources), 74:35:06 (Regulated air pollutant emissions), 74:36:07 (New source performance standards), 74:36:08 (National emission standards for hazardous air pollutants), 74:36:09 (Prevention of significant deterioration), and 74:36:10 (New source review) provide enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters necessary to maintain South Dakota in attainment with the federal NAAQS. Authority to promulgate these rules is contained in South Dakota Codified Laws (SDCL) 34A–1–1, 34A–1–6, 34A–1–18, 34A–1–19.

b. EPA analysis: South Dakota's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS. Furthermore, South Dakota has no areas designated as nonattainment for the 1997 ozone NAAQS. As a result, the South Dakota SIP contains no emissions limitations specific to ozone and/or its precursors. Instead, South Dakota regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs.[2] This suffices, in the case of

[2] Certain rules cited by South Dakota—its title V program (ARSD 74:36:05), new source performance standards (ARSD 74:36:07), and national emissions standards for hazardous air pollutants (ARSD 74:36:08)—are not required for inclusion into South Dakota's SIP and are therefore not considered by EPA in this action.

South Dakota, to meet the requirements of section 110(a)(2)(A) for the 1997 ozone NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing SIP provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [3] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

2. Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. South Dakota's response to this requirement: The rules in ARSD 74:36:02 define the goals, NAAQS, air monitoring methods and monitoring requirements provided for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data and making these data available to EPA. Authority used to promulgate these rules is contained in SDCL 34A–1–6 and 34A–1–15.

b. EPA analysis: South Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. The South Dakota Department of Environment and Natural Resources (DENR) 2008 Ambient Air Monitoring Annual Network Plan was approved by EPA Region 8 on March 23, 2009.

3. Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. South Dakota's response to this requirement: SDCL 34A–1–39 through 34A–1–54 and 34A–1–62 provides DENR with the authority to provide enforcement of all South Dakota SIP measures and the regulations under ARSD Chapter 74:36:09 (Prevention of significant deterioration) and 74:36:10 (New source review).

b. EPA analysis: As explained above, in this action EPA is not evaluating non-attainment related provisions, such as the nonattainment New Source Review (NSR) program required by part D of the Act. In addition, South Dakota has no nonattainment areas for the 1997 ozone NAAQS and is therefore not required at this point to have a corresponding nonattainment NSR program. In this action, EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

South Dakota's SIP-approved PSD program incorporates by reference (with certain exceptions) the federal PSD program in 40 CFR 52.21 as of July 1, 2005 (72 FR 72617). As described in our notice of approval of the program (72 FR 72617), South Dakota's PSD program met the general requirements of CAA section 110(a)(2)(C) as of that date.

Greenhouse Gas Regulation

EPA notes a potential inconsistency between South Dakota's February 1, 2008 infrastructure SIP certification and EPA's recently promulgated rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" ("PSD SIP Narrowing Rule"), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of South Dakota's PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 75 FR 31514. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of South Dakota's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its February 1, 2008 certification, South Dakota relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposes approval of the South Dakota infrastructure SIP for infrastructure element (C) if either the State clarifies (or modifies) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. In the alternative, if South Dakota does not take either action, EPA proposes to disapprove the infrastructure SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for South Dakota to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).

Regulation of Ozone Precursors

In order for South Dakota's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must also properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS, which includes requirements for PSD programs to treat nitrogen oxides as a precursor for ozone (72 FR 71612). The phase 2 implementation rule accordingly updated the federal program at 40 CFR 52.21 to meet these requirements, effective January 30, 2006. This effective date is after the July 1, 2005 date of incorporation of 40 CFR 52.21 by the currently approved South

[3] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." (Sept. 20, 1999).

Dakota SIP. In other words, South Dakota's current SIP-approved PSD program does not meet the requirements of the phase 2 ozone implementation rule.

On June 14, 2010, the State submitted to EPA a SIP revision that (among other things) revises ARSD 74:36:09 (Prevention of significant deterioration) to incorporate by reference the federal PSD program in 40 CFR 52.21 as of July 1, 2009. As a result of the revised incorporation date, the submitted PSD program meets the requirements of the phase 2 ozone implementation rule. EPA therefore proposes to concurrently approve the portion of the June 14, 2010 submission revising ARSD 74:36:09, with the following exception.

Consistent with the Tailoring Rule, the SIP PSD Narrowing Rule, and the discussion above, EPA proposes to disapprove the revision of ARSD 74:36:09 in the June 14, 2010 submission to the extent that the revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds. The Tailoring Rule modified the federal PSD program at 40 CFR 52.21, effective August 2, 2010, to incorporate the Tailoring Rule thresholds.[4] 75 FR at 31606–07. This effective date is after July 1, 2009, the date of incorporation of 40 CFR 52.21 in South Dakota's June 14, 2010 submission. Therefore, in order to ensure consistency with the Tailoring Rule and the PSD SIP Narrowing Rule, it is necessary for EPA to propose to disapprove the revision to the extent it applies PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds. As mentioned above, this disapproval will not result in a need for South Dakota to submit a SIP revision, sanctions, or a FIP.

Minor New Source Review

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, which regulates emissions of ozone and its precursors. On September 6, 1995, EPA approved extensive changes to the State's minor NSR program for incorporation into the SIP, and there was at the time no objection to the provisions of this program (60 FR 46222). Since then, the State and EPA have relied on the existing State minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve South Dakota's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. Interstate transport: Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. South Dakota's response to this requirement: South Dakota submitted its Interstate Transport SIP to EPA on May 25, 2007.

b. EPA Analysis: EPA approved the State's Interstate Transport provisions for the 1997 ozone NAAQS on May 8, 2008 (73 FR 26019). EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. Interstate and International transport provisions: Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. South Dakota's response to this requirement: South Dakota submitted its Interstate Transport SIP to EPA on May 25, 2007.

b. EPA Analysis: Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

South Dakota's SIP-approved PSD program incorporates by reference the Federal PSD program at 40 CFR 52.21. However, South Dakota separately implements public notice requirements by incorporating by reference (with certain modifications) 40 CFR 51.166(q). In particular, the SIP's incorporation of 51.166(q)(2)(iii), which requires notice to states whose lands may be affected by the emissions of sources subject to PSD, satisfies the notice requirement of section 126(a).

South Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. Adequate resources and authority*:* Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

a. South Dakota's response to this requirement: SDCL 34A–1–4, 34A–1–7 through 34A–1–10 provides DENR with adequate personnel to carry out South Dakota's SIP and related issues. SDCL 34A–1–57 through 34A–1–60, and DENR's agreement with EPA for 103 and 105 grants and associated matching state funds provides DENR with the funding necessary to carry out South Dakota's SIP and related issues. SDCL 34A–1 provides DENR with the legal authority

[4] Note that this is the effective date of the modification of 52.21, not the initial date of applicability of the thresholds, which was January 2, 2011.

to carry out South Dakota's SIP and related issues.

b. EPA Analysis: South Dakota's SIP meets the requirements of section 110(a)(2)(E) for the 1997 ozone NAAQS. SDCL 34A–1–57 through 34A–1–60 provides adequate authority for the State of South Dakota and the DENR to carry out its SIP obligations with respect to the 1997 ozone NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out South Dakota's SIP requirements. South Dakota's resources meet the requirements of CAA section 110(a)(2)(E). Finally, SDCL 1–40–25.1 requires the Board of Minerals and Environment to be composed in accordance with section 128 of the CAA.

7. Stationary source monitoring and reporting*:* Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) period reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:04 (Operating permits for minor sources), 74:35:05 (Operating permits for part 70 sources), 74:37:11 (Performance testing) and 74:36:13 (Continuous emission monitoring systems) establish a system to monitor emissions from stationary sources and periodic emissions reports. Authority to promulgate these rules is contained in SDCL 34A–a–6 and SDCL 34A–1–12.

b. EPA Analysis: South Dakota's SIP provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. As mentioned above, the SIP contains no other, specific emissions limitations on ozone or its precursors. South Dakota's SIP therefore meets the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. Emergency powers: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:03 (Air quality episodes) adopt by reference the criteria in 40 CFR 51.151 as the air quality episode plan to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions of the South Dakota SIP. Authority to promulgate these rules is contained in SDCL 34A–1–6, 34A–1–15, and 34A–1–45. The episode criteria specified in this chapter for ozone are based on an 8-hour average ozone level at a monitoring site. These criteria have previously been approved by EPA as adequate to address ozone emergency episodes.

b. EPA analysis: SDCL 34A–1–45 provides DENR with general emergency authority comparable to that in section 303 of the Act. The SIP also requires DENR to follow criteria in 40 CFR 51.151 in proclaiming an emergency episode and to develop a contingency plan. The contingency plan, though, has not itself been incorporated into the SIP. However, South Dakota has not monitored any values above the priority cut point for ozone. See 40 CFR 51.150(b)(5). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. Future SIP revisions*:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this Act.

a. South Dakota's response to this requirement: SDCL 34A–1–6 provides DENR with the authority to revise South Dakota's SIP in response to changes to the federal NAAQS, availability of improved methods for attaining the federal standards, or in response to an EPA finding that the SIP is substantially inadequate.

b. EPA analysis: South Dakota's statutory provision at SDCL 34A–1–6 gives DENR sufficient authority to meet the requirements of 110(a)(2)(H).

10. Nonattainment Area Plan or Plan Revision under Part D: Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

a. EPA analysis for Section 110(a)(2)(I): As noted above, the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

a. South Dakota's response to this requirement: SDCL 34A–1–1 and 34–1–10 provide DENR with the authority to consult with local governments, other states, federal government, etc. SDCL 1–40–31 and 34A–1–9 provide DENR with the authority to collect and disseminate information and provide full public inspection and disclosure of all non-confidential public records related to DENR and those activities within its jurisdiction. The public is notified of any concentrations that exceed the NAAQS through DENR's Air Quality program website that contains the daily concentrations updated hourly from five sites covering 17 parameters from continuous analyzers and monitors located throughout the state. Four of these sites report hourly ozone levels to the website and to the *AirNow* EPA database. Through this site, the public is notified of high concentration periods. The rules in ARSD Chapter 74:36:09 (Prevention of significant deterioration) adopt by reference federal regulations under 40 CFR parts 51 and 52 and provide DENR with regulations necessary to meet the applicable requirements of part C of the federal CAA related to PSD and visibility protection. South Dakota's PSD rules were approved in South Dakota's SIP on January 22, 2008. Authority to promulgate these rules is contained in SDCL 34A–1–6.

b. EPA Analysis: The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies,

consistent with the requirements of CAA section 121. Furthermore, EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP. (45 FR 58528, Sept. 4, 1980.)

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated South Dakota's SIP-approved PSD program in this proposed action under IV.3, element 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the South Dakota SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. Air quality and modeling/data: Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. South Dakota's response to this requirement: The rules in ARSD Chapter 74:36:04 (Operating permit for minor sources), 74:36:05 (Operating permit for part 70 sources), 74:36:09 (Prevention of significant deterioration), and 74:36:10 (New source review) provide DENR with the authority to perform air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Authority to promulgate these rules is contained in SDCL 34A–1–6 and 34A–1–9.

b. EPA Analysis: South Dakota's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. Permitting fees: Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. South Dakota's response to this requirement: The DENR has an approved title V operating permit program (61 FR 2720, Jan. 29, 1996) that requires major stationary sources to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing the title V permit.

b. EPA Analysis: South Dakota's approved title V operating permit program meets the requirements of CAA section 110(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective February 28, 1996. (See 61 FR 2720, Jan. 29, 1996.) As discussed in the notice proposing approval of the title V program (60 FR 2917, Jan. 12, 1995), the State demonstrated that the fees collected were sufficient to administer the program.

14. Consultation/participation by affected local entities: Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. South Dakota's response to this requirement: SDCL 34A–1–1, 34A–1–10 provides DENR with the authority to provide for consultation and participation in South Dakota's SIP development by local political subdivision affected by the SIP. Cooperation by DENR with other agencies provides for the consultation, advise, and cooperation with other state, local, industries, other states, interstate or inter local agencies, and the federal government, and with interested persons or groups on air pollution control issues.

b. EPA Analysis: South Dakota's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 ozone NAAQS.

V. What action is EPA taking?

In this action, EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for South Dakota for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA proposes to approve the section 110(a)(2)(C) infrastructure element in full in the event that South Dakota takes one of the actions described in the discussion of that element; in the alternative, EPA proposes to disapprove the section 110(a)(2)(C) element to the extent described and to otherwise approve this element. EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. EPA also proposes to approve the portion of South Dakota's June 14, 2010 SIP submission that revises South Dakota's PSD program to incorporate by reference the federal program at 40 CFR 52.21 as of July 1, 2009, except to the extent that revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below the thresholds set out in the Tailoring Rule, 75 FR 31514.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 4, 2011.

Judith Wong,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–11723 Filed 5–11–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2008–0107; MO 92210–0–0009–B2]

RIN 1018–AV88

Endangered and Threatened Wildlife and Plants; Listing of the Altamaha Spinymussel and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the October 6, 2010, proposed designation of critical habitat for the Altamaha spinymussel *(Elliptio spinosa)* under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before June 13, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

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

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R4–ES–2008–0107.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2008–0107; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Sandra Tucker, Field Supervisor, U.S. Fish and Wildlife Service, Georgia Ecological Services Office, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Altamaha spinymussel that was published in the **Federal Register** on October 6, 2010 (75 FR 61664), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Altamaha spinymussel;

(b) The amount and distribution of Altamaha spinymussel habitat; and

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Which areas would be appropriate as critical habitat for the species.

(9) Comments or information that may assist us in identifying or clarifying the primary constituent elements.

(10) Whether any specific areas we are proposing as critical habitat should be considered for exclusion under section 4(b)(2) of the Act, and whether benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(11) Information on the projected and reasonably likely impacts of climate change on the Altamaha spinymussel, and any special management needs or protections that may be needed in critical habitat areas we are proposing.

If you submitted comments or information on the proposed rule (75 FR 61664) during the initial comment period from October 6, 2010, to December 6, 2010, please do not resubmit them. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We will not consider comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket Number FWS–R4–ES–2008–0107, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Georgia Ecological Services Office, Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2008–0107, or by mail from the U.S. Fish and Wildlife Service, Georgia Ecological Services Office, Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Altamaha spinymussel in this document. For more information on previous Federal actions concerning the Altamaha spinymussel or its habitat, refer to the proposed listing and critical habitat rule published in the **Federal Register** on October 6, 2010 (75 FR 61664), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2008–0107) or from the U.S. Fish and Wildlife Service, Georgia Ecological Services Office, Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

On October 6, 2010, we published a proposed rule to designate critical habitat for the Altamaha spinymussel (75 FR 61664). We proposed to designate approximately 240 kilometers (149 miles) of mainstem river channel in four units as critical habitat in Appling, Ben Hill, Coffee, Jeff Davis, Long, Montgomery, Tattnall, Telfair, Toombs, Wayne, and Wheeler Counties, Georgia. That proposal had a 60-day comment period, ending December 6, 2010.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Altamaha spinymussel, the potential benefits of critical habitat include public awareness of the presence of the Altamaha spinymussel and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Altamaha spinymussel due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, funded, or authorized by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Altamaha spinymussel. The DEA describes the economic impacts of all potential conservation efforts for the Altamaha spinymussel; some of these costs will likely be incurred regardless of whether we designate critical habitat.

The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Altamaha spinymussel over the next 30 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 30-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of Altamaha spinymussel conservation efforts associated with the following categories of activity: Electric power generation and transmission, transportation, and recreation. Applying a seven percent discount rate, electric power generation and transmission is estimated to incur the largest impact at $26,700 over the next 30 years (2011–2040); overall incremental impacts associated with the designation are estimated at $37,100 over the same time period.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our October 6, 2010, proposed rule (75 FR 61664), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Altamaha spinymussel would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as transportation, electric power generation and transmission, and recreation. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Altamaha spinymussel is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species.

If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Altamaha spinymussel. Only the transportation industry included small entities likely to incur incremental costs associated with the designation and these costs, which are largely associated with formal consultation under section 7 of the Act, are expected to result in less than 0.01 percent of the annual revenue threshold that small transportation entities must meet. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified one category of small entity that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, Athens, Georgia Ecological Services Office.

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

Dated: May 2, 2011.

Will Shafroth,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–11607 Filed 5–11–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 92
Thursday, May 12, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 6, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Grain Inspection, Packers & Stockyards Administration

Title: Report and Recordkeeping Requirements.

OMB Control Number: 0580–0013.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is mandated to provide, upon request, inspection, certification, and identification services related to assessing the class, quality, quantity, and condition of agricultural products shipped or received in interstate and foreign commerce. Applicants requesting GIPSA services must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Need and Use of the Information: GIPSA employees use the information to guide them in the performance of their duties. Additionally, producers, elevator operators, and/or merchandisers who obtain official inspection, testing, and weighing services are required to keep records related to the grain or commodity for three years. Personnel who provide official inspection, testing, and weighing services are required to maintain records related to the lot of grain or related commodity for a period of five years. The information is used for the purpose of investigating suspected violations.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 8,610.

Frequency of Responses: Recordkeeping; Reporting: On occasion, weekly, monthly, semi-annually, and annually.

Total Burden Hours: 158,144.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–11589 Filed 5–11–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for Market Access Program, Foreign Market Development Cooperator Program, Emerging Markets Program, Technical Assistance for Specialty Crops Program, and Quality Samples Program; Extension of Application Due Date

AGENCY: Commodity Credit Corporation.

ACTION: Notice; extension of application due date.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 10.601 (MAP), 10.600 (FMD), 10.603 (EMP), 10.604 (TASC), 10.605 (QSP).

SUMMARY: The Commodity Credit Corporation (CCC) published five notices in the **Federal Register** on April 15, 2011, inviting proposals for the Market Access Program (MAP), Foreign Market Development Cooperator Program (FMD), Emerging Markets Program (EMP), Technical Assistance for Specialty Crops Program (TASC), and Quality Samples Program (QSP). The notices stated that eligible applicants for these programs could submit proposals through May 16, 2011. CCC was unaware at that time that electrical construction issues at the U.S. Department of Agriculture would prevent the Internet-based application from operating for several days during the application period. Thus, this unforeseen situation results in less than the desired 30-day application period. Consequently by this notice, CCC is extending the application period due date for all of these programs to May 20, 2011.

DATES: *Effective:* May 12, 2011.

FOR FURTHER INFORMATION CONTACT: Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or by *e-mail: podadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web sites at: *http://www.fas.usda.gov/mos/programs/map.asp, http://www.fas.usda.gov/mos/programs/fmdprogram.asp, http://www.fas.usda.gov/mos/em-markets/em-*

markets.asp, http://www.fas.usda.gov/mos/tasc/tasc.asp, and *http://www.fas.usda.gov/mos/programs/QSP.asp.*

SUPPLEMENTARY INFORMATION: CCC published five notices in the **Federal Register** on April 15, 2011, establishing a May 16, 2011, deadline for proposals for the MAP, FMD, EMP, TASC, and QSP programs. This deadline, which is no longer adequate based on circumstances beyond the control of CCC, appeared in the **DATES** section and the "Application and Submission Information" section of each notice. The new application due date is May 20, 2011. By this notice, CCC informs applicants for funding under the MAP, FMD, EMP, TASC, and QSP programs that all applications must be received by 5 p.m. Eastern Daylight Time, May 20, 2011. Applications received after this date will be considered as described in the previously issued notices.

Dated: May 6, 2011.

John D. Brewer,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2011–11703 Filed 5–11–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The West Virginia Resource Advisory Committee will meet in Elkins, West Virginia. 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 is for the committee to consider new project proposals .

DATES: The meetings will be held on May 26, June 28, and July 19, 2011, and will all begin at 1 p.m.

ADDRESSES: The meetings will be held at the Monongahela National Forest Supervisor's Office, 200 Sycamore Street, Elkins, WV 26241. Written comments should be sent to Kate Goodrich-Arling at the same address. Comments may also be sent via e-mail to *kgoodricharling@fs.fed.us,* or via facsimile to 304–637–0582.

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 Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich-Arling, RAC coordinator, USDA, Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241; (304) 636–1800; e-mail *kgoodricharling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. *The following business will be conducted:* (1) Review and approval or amendment of notes from previous meeting (2) Consider new project proposals; and (3) Public Comment. 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 meetings.

Dated: May 4, 2011.

Clyde N. Thompson,

Designated Federal Officer.

[FR Doc. 2011–11621 Filed 5–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 15, 2010, the Department of Commerce ("the Department") published its preliminary results of changed circumstances review and intent to revoke, in part, the countervailing duty ("CVD") order on certain pasta from Italy.[1] We are now revoking this order, in part, with regard to gluten-free pasta, as described in the "Scope of the Order" section of this notice. The Department confirmed that Petitioners[2] have no interest in CVD relief from imports of gluten-free pasta. The Department received comments filed by domestic interested party, Maplegrove Gluten Free Goods Inc. ("Maplegrove"), in opposition to the partial revocation; however, Maplegrove was unable to demonstrate that Petitioners did not represent at least 85 percent of total production of the domestic like product. Therefore, the *Preliminary Results* are hereby adopted as the final results.

DATES: *Effective Date:* May 12, 2011.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or Jessica Forton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0914 and (202) 482–0509, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the CVD order on certain pasta from Italy.[3] On July 29, 2010, the Department received a request on behalf of H.J. Heinz Company ("Heinz") to initiate a no-interest changed circumstances review and revocation, in part, of the CVD order on certain pasta from Italy with respect to gluten-free pasta.[4] On September 17, 2010, the Department published a notice of initiation of changed circumstances review and consideration of revocation of order, in part, with respect to the CVD order on certain pasta from Italy with respect to gluten-free pasta.[5] The Department stated that it would publish the final results of this changed circumstance review after analyzing comments received by interested parties in the briefing period.[6] On September 27, 2010, Petitioners expressed a lack of interest in maintaining the CVD order with respect to gluten-free pasta.[7] On

[1] *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent To Revoke, In Part,* 75 FR 78223 (December 15, 2010) ("*Preliminary Results*").

[2] New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company (collectively, "Petitioners").

[3] *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 38544 (July 24, 1996).

[4] *See* Letter from Heinz to the Department, Request to Initiate a No-Interest Changed Circumstances Review and Revocation, in Part, with Respect to Gluten-Free Pasta (July 29, 2010) ("Heinz Letter"), which is on file in the Central Records Unit ("CRU"), Room 7046, main Commerce Building.

[5] *See Certain Pasta From Italy: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of Order, in Part,* 75 FR 56992 (September 17, 2010).

[6] *Id.* 75 FR at 56993–94.

[7] *See* Memorandum from Austin Redington, International Trade Compliance Analyst, AD/CVD Operations Office 1, to the File, Changed Circumstance Review of Certain Pasta from Italy: Statement of No Opposition from Domestic Industry (October 13, 2010), which is on file in the CRU.

November 30, 2010, Petitioners confirmed that they represent "substantially all" of domestic production, as set forth in section 782(h) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.222(g)(1)(i), which the Department has previously interpreted to mean at least 85 percent of the total production of the domestic like product covered by the order.[8] On December 15, 2010, the Department issued its *Preliminary Results* of changed circumstances review and intent to revoke, in part, with respect to gluten-free pasta.

Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review is gluten-free pasta.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order.[9] Furthermore, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale are also excluded from the order.[10] Pursuant to this notice, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the CVD order.

The merchandise subject to the order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of Changed Circumstance Review; Partial Revocation of CVD Order

On December 27, 2010, Maplegrove, a domestic producer of gluten-free pasta, expressed an objection to the changed circumstances review and intent to revoke, in part, with respect to gluten-free pasta.[11] The Department subsequently notified Maplegrove that its objection must present evidence that Petitioners do not represent at least 85 percent of the total production of the domestic like product.[12] In this notification, the Department offered Maplegrove an additional opportunity to present such evidence. However, Maplegrove did not do so. Thus, pursuant to section 782(h) of the Act and 19 CFR 351.222(g)(1)(i), Maplegrove's objection to the changed circumstances review is insufficient to overcome the expressed lack of interest shown by Petitioners. Therefore, the Department is partially revoking the CVD order on certain pasta with respect to gluten-free pasta from Italy, in accordance with sections 751(b), (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g).

In the *Preliminary Results,* we stated that the Department would instruct U.S. Customs and Border Protection ("CBP") to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. However, in a comment submitted on October 12, 2010, Heinz requested that the Department retroactively revoke the CVD order, citing *Wooden Bedroom Furniture,* as support.[13] On March 31, 2011, the Department issued a letter to all interested parties inviting comment on Heinz's proposal to make effective revocation retroactive.[14] The Department did not receive comments from any parties in response to this letter.

Therefore, consistent with *Wooden Bedroom Furniture,* we have determined to revoke the CVD order with respect to unliquidated entries of gluten-free pasta retroactively to January 1, 2009. This is the date following the last day of the most recently completed administrative review, and consequently these entries are not subject to a final determination by the Department.

Accordingly, we will instruct CBP to liquidate without regard to CVDs all unliquidated entries of gluten-free pasta, entered, or withdrawn from warehouse, for consumption on or after January 1, 2009. The Department will also instruct CBP to refund with interest any estimated CVDs collected with respect to unliquidated entries of gluten-free pasta entered, or withdrawn from warehouse for consumption on or after January 1, 2009, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4). Further, the Department will instruct CBP to no longer suspend liquidation on entries with respect to gluten-free pasta.

This notice 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 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

[8] *See* Memorandum from Patricia Tran, Acting Program Manager, AD/CVD Operations Office 1, to Nancy Decker, Acting Office Director, AD/CVD Operations Office 1, Ex Parte Memorandum: Phone Conversation with Counsel for Petitioners (November 30, 2010), which is on file in the CRU; *see also Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 70 FR 35618, 35624 (June 21, 2005), unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Changed Circumstances Review and Determination Not to Revoke, In Part,* 70 FR 47787 (August 15, 2005).

[9] *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner (August 4, 2004), which is on file in the CRU.

[10] *See* Memorandum from Audrey Twyman to Susan Kuhbach, Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy (February 28, 2006), which is on file in the CRU.

[11] *See* Letter from Maplegrove to the Department, Objection to the Changed Circumstances Review and Intent to Revoke, in Part, with Respect to Gluten-Free Pasta (December 27, 2010), which is on file in the CRU.

[12] *See* Letter from Yasmin Nair, Program Manager, AD/CVD Operations Office 1, to Maplegrove (March 1, 2011), which is on file in the CRU.

[13] *See* Heinz Letter (citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009) ("*Wooden Bedroom Furniture*")).

[14] *See* Letter from Yasmin Nair, Program Manager, Office 1, AD/CVD Operations, to All Interested Parties (March 31, 2011), which is on file in the CRU.

Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances review, partial revocation of the CVD order and notice are in accordance with sections 751(b) and (d), 777(i), and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: May 5, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–11700 Filed 5–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA423

Permits; Foreign Fishing

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

ACTION: Notice of receipt of a permit application for transshipment by foreign vessels; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by May 26, 2011.

ADDRESSES: Written comments on this action, identified by RIN 0648–XZ423, may be submitted by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- Mail: Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim at (301) 713–9090 or by e-mail at *mi.ae.kim@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States. In addition, Public Law 104–297, section 105(e) directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from Maine's seaward boundary.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated * * * an interest in performing the transportation at fair and reasonable rates." NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application requesting authorization for five Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69°30′ W longitude and within 12 nautical miles from Maine's seaward boundary.

Dated: May 9, 2011.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2011–11670 Filed 5–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting, room location change.

SUMMARY: This notice announces a change in the room location of a public meeting of the Commerce Spectrum Management Advisory Committee (Committee).

DATES: The meeting will be held on May 25, 2011 from 9 a.m. to 12 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6059, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415, or BWashington@ntia.doc.gov; and/or visit NTIA's Web site at *http://www.ntia.doc.gov/advisory/spectrum.*

SUPPLEMENTARY INFORMATION: On April 28, 2011, the National Telecommunications and Information Administration published in the **Federal Register** a notice announcing a public meeting of the Committee to be held at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6029, Washington, DC 20230. *See* 76 FR 23796 (April 28, 2011). The Committee meeting will now be held in Room 6059. All other information regarding this public meeting remains unchanged. Please refer to NTIA's Web site for the most up-to-date meeting agenda and access information.

Dated: May 9, 2011.

Milton Brown,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2011–11651 Filed 5–11–11; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Grant Partially Exclusive License of the United States Patent Application No. 12/243,708, Filed October 01, 2008 Entitled: "Biogenic Template for Enhanced Sorption of Contaminants"

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective partially exclusive license of the following U.S. Patent Application 12/243,708 Filed October 01, 2008 to Nereus Environmental LLC for use in

soils and water remediation within the environmental remediation services industry.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, ATTN: CEERD–OT (Ms. Bea Shahin), 2902 Newmark Drive, Champaign, IL 6182–1076.

FOR FURTHER INFORMATION CONTACT: Ms. Bea Shahin (217) 373–7234, FAX (217) 373–7210, e-mail: *Bea.S.Shahin@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This patent application claims a method of manufacturing a remediation material by providing a biogentic material as a substrate, preparing the surface of the substrate for a chemical reaction, and performing template-driven surface derivitization on the surface of the substrate to provide a reactive surface of the substrate for sorption of chemical species or sorption and degradation of chemical species. The remediation material may be placed into contact with surface water, ground water, soil, or sediment by at least one permeable reactive barrier, direct introduction of the material into soil or sediment, to remove contaminants from the surface water, ground water, soil, or sediment.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–11634 Filed 5–11–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket ID ED–OS–2010–0011]

RIN 1894–AA00

Supplemental Priorities for Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Notice of final supplemental priorities and definitions for discretionary grant programs; correction.

SUMMARY: On December 15, 2010, the Department of Education published in the **Federal Register** (75 FR 78486) a notice announcing final supplemental priorities and definitions for the Department's discretionary grant programs (Supplemental Priorities NFP). This notice makes several technical corrections to the Supplemental Priorities NFP.

FOR FURTHER INFORMATION CONTACT: Margo Anderson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W311, Washington, DC 20202–5910. *Telephone:* (202) 205–3010; or by *e-mail: Margo.Anderson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

SUPPLEMENTARY INFORMATION:

Background

The Supplemental Priorities NFP included several technical errors that we are correcting in this notice. In addition, for ease of reference, we are including the full text of all of the priorities and definitions (as corrected) in Appendix A to this notice.

Corrections

In FR Doc. 2010–31189, published in the **Federal Register** on December 15, 2010 (75 FR 78486), make the following corrections:

1. On page 78496, in the first column, under the heading *Changes,* in the fifth line, the word "regular" is inserted before the word "high".

2. On page 78497, in the first column, under the heading *Priority 8—Increasing Postsecondary Success,* in paragraph (d), the word "regular" is inserted before the word "high".

3. On page 78503, in the first column, in paragraph (d), a comma is inserted after the word "programs" in the fifth line of paragraph (d).

4. On page 78507, in the first column, under the heading *Priority 3—Improving the Effectiveness and Distribution of Effective Teachers or Principals,* paragraph (b)(2) is corrected to read as follows:

(2) Data that include, in significant part, student achievement (as defined in this notice) or student growth (as defined in this notice) data and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1).

5. On page 78507, in the second column, under the heading *Priority 6—Technology,* the parenthetical "(as defined in this notice)" is inserted after the word "achievement".

6. On page 78507, in the third column, under the heading *Priority 8—Increasing Postsecondary Success,* in paragraph (d), the word "regular" is inserted before the word "high".

7. On page 78508, in the second column under the heading *Priority 13—Enabling More Data-Based Decisionmaking,* a comma is inserted after the word "programs" in the fifth line of paragraph (d).

8. On page 78508, in the second column, under the heading *Priority 15—Supporting Programs, Practices, or Strategies for Which There Is Strong or Moderate Evidence of Effectiveness,* the parenthetical "(as defined in this notice)" is removed from the second and third lines of the statement of the priority.

9. On page 78510, in the first column, in the definition of *Quasi-experimental study,* in the third line of the definition, the words "experimental design" are replaced with the words "experimental study".

10. On page 78510, in the first column, in the definition of *Quasi-experimental study,* in the second sentence, the parenthetical "(as defined in this notice)" following the words "quasi-experimental studies" is removed.

Program Authority: 20 U.S.C. 1221e–3, 20 U.S.C. 3474.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 6, 2011.

Arne Duncan,

Secretary of Education.

Appendix A: Final Supplemental Priorities And Definitions

Final Priorities

I. Advancing Key Cradle-to-Career Educational Reforms

Priority 1—Improving Early Learning Outcomes.

Projects that are designed to improve school readiness and success for high-need children (as defined in this notice) from birth through third grade (or for any age group of high-need children within this range) through a focus on one or more of the following priority areas:

(a) Physical well-being and motor development.

(b) Social-emotional development.

(c) Language and literacy development.

(d) Cognition and general knowledge, including early numeracy and early scientific development.

(e) Approaches toward learning.

Priority 2—Implementing Internationally Benchmarked, College- and Career-Ready Elementary and Secondary Academic Standards.

Projects that are designed to support the implementation of internationally benchmarked, college- and career-ready academic standards held in common by multiple States and to improve instruction and learning, including projects in one or more of the following priority areas:

(a) The development or implementation of assessments (*e.g.,* summative, formative, interim) aligned with those standards.

(b) The development or implementation of curriculum or instructional materials aligned with those standards.

(c) The development or implementation of professional development or preparation programs aligned with those standards.

(d) Strategies that translate the standards into classroom practice.

Priority 3—Improving the Effectiveness and Distribution of Effective Teachers or Principals.

Projects that are designed to address one or more of the following priority areas:

(a) Increasing the number or percentage of teachers or principals who are effective or reducing the number or percentage of teachers or principals who are ineffective, particularly in high-poverty schools (as defined in this notice) including through such activities as improving the preparation, recruitment, development, and evaluation of teachers and principals; implementing performance-based certification and retention systems; and reforming compensation and advancement systems.

(b) Increasing the retention, particularly in high-poverty schools (as defined in this notice), and equitable distribution of teachers or principals who are effective.

For the purposes of this priority, teacher and principal effectiveness should be measured using:

(1) Teacher or principal evaluation data, in States or local educational agencies that have in place a high-quality teacher or principal evaluation system that takes into account student growth (as defined in this notice) in significant part and uses multiple measures, that, in the case of teachers, may include observations for determining teacher effectiveness (such as systems that meet the criteria for evaluation systems under the Race to the Top program as described in criterion (D)(2)(ii) of the Race to the Top notice inviting applications (74 FR 59803)); or

(2) Data that include, in significant part, student achievement (as defined in this notice) or student growth (as defined in this notice) data and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1).

Priority 4—Turning Around Persistently Lowest-Achieving Schools.

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Priority 5—Improving School Engagement, School Environment, and School Safety and Improving Family and Community Engagement.

Projects that are designed to improve student outcomes through one or more of the following priority areas:

(a) Improving school engagement, which may include increasing the quality of relationships between and among administrators, teachers, families, and students and increasing participation in school-related activities.

(b) Improving the school environment, which may include improving the school setting related to student learning, safety, and health.

(c) Improving school safety, which may include decreasing the incidence of harassment, bullying, violence, and substance use.

(d) Improving parent and family engagement (as defined in this notice).

(e) Improving community engagement (as defined in this notice) by supporting partnerships between local educational agencies, school staff, and one or more of the following:

(i) Faith- or community-based organizations.

(ii) Institutions of higher education.

(iii) Minority-serving institutions or historically black colleges or universities.

(iv) Business or industry.

(v) Other Federal, State, or local government entities.

Priority 6—Technology.

Projects that are designed to improve student achievement (as defined in this notice) or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Priority 7—Core Reforms.

Projects conducted in States, local educational agencies, or schools where core reforms are being implemented. Such a project is one that is conducted—

(a) In a State that has adopted K–12 State academic standards in English language arts and mathematics that build towards college- and career-readiness;

(b) In a State that has implemented a statewide longitudinal data system that meets all the requirements of the America Competes Act; and

(c) In a local educational agency or school in which teachers receive student growth (as defined in this notice) data on their current students and the students they taught in the previous year and these data are provided, at a minimum, to teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects.

Priority 8—Increasing Postsecondary Success.

Projects that are designed to address one or more of the following priority areas:

(a) Increasing the number and proportion of high-need students (as defined in this notice) who are academically prepared for and enroll in college or other postsecondary education and training.

(b) Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

(c) Increasing the number and proportion of high-need students (as defined in this notice) who enroll in and complete high-quality programs of study (as defined in this notice) designed to lead to a postsecondary degree, credential, or certificate.

(d) Increasing the number of individuals who return to the educational system to obtain a regular high school diploma; to enroll in college or other postsecondary education or training; to obtain needed basic skills leading to success in college or other postsecondary education or the workforce; or to enter, persist in, and

complete college or rigorous postsecondary career and technical training leading to a postsecondary degree, credential, or certificate.

(e) Increasing the number and proportion of high-need students (as defined in this notice) who enroll in and complete graduate programs.

(f) Increasing the number and proportion of postsecondary students who complete college or other postsecondary education and training and who are demonstrably prepared for successful employment, active participation in civic life, and lifelong learning.

II. Addressing Needs of Student Subgroups

Priority 9—Improving Achievement and High School Graduation Rates.

Projects that are designed to address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice).

(b) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students with disabilities.

(c) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for English learners.

(d) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for high-need students (as defined in this notice).

(e) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates in high-poverty schools (as defined in this notice).

(f) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for all students in an inclusive manner that ensures that the specific needs of high-need students (as defined in this notice) participating in the project are addressed.

Priority 10—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education.

Projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development.

Priority 11—Promoting Diversity.

Projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.

Priority 12—Support for Military Families.

Projects that are designed to address the needs of military-connected students (as defined in this notice).

III. Building Capacity for Systemic Continuous Improvement

Priority 13—Enabling More Data-Based Decision-Making.

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving instructional practices, policies, and child outcomes in early learning settings.

(b) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

(c) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

(d) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Priority 14—Building Evidence of Effectiveness.

Projects that propose evaluation plans that are likely to produce valid and reliable evidence in one or more of the following priority areas:

(a) Improving project design and implementation or designing more effective future projects to improve outcomes.

(b) Identifying and improving practices, strategies, and policies that may contribute to improving outcomes. Under this priority, at a minimum, the outcome of interest is to be measured multiple times before and after the treatment for project participants and, where feasible, for a comparison group of non-participants.

Priority 15—Supporting Programs, Practices, or Strategies for which there is Strong or Moderate Evidence of Effectiveness.

Projects that are supported by strong or moderate evidence. A project that is supported by strong evidence (as defined in this notice) will receive more points than a project that is supported by moderate evidence (as defined in this notice).

Priority 16—Improving Productivity.

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Definitions

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to:

(1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups);

(2) Demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background;

(3) The time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and

(4) Methods used to collect outcome data (*e.g.,* the same test of reading skills

administered in the same way to both groups).

Community engagement means the systematic inclusion of community organizations as partners with local educational agencies and school staff. These organizations may include faith- and community-based organizations, institutions of higher education (including minority-serving institutions and historically black colleges and universities), business and industry, or other Federal, State, and local government entities.

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.[1]

Military-connected student means: (a) A child participating in an early learning program, a student in preschool through grade 12, or a student enrolled in postsecondary education or training who has a parent or guardian on active duty in the uniformed services (as defined by 37 U.S.C. 101, in the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or the reserve component of any of the aforementioned services) or (b) a student who is a veteran of the uniformed services, who is on active duty, or who is the spouse of an active-duty servicemember.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence:

(1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability;

(2) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or

(3) Correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Parent and family engagement means the systematic inclusion of parents and families, working in partnership with local educational agencies and school staff, in their child's education, which may include strengthening the ability of (a) Parents and families to support their child's education and (b) school staff to work with parents and families.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a

[1] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time; a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

number of years in the "all students" group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Programs of study means career and technical education programs of study, which may be offered as an option to students (and their parents as appropriate) when planning for and completing future coursework, for career and technical content areas, that—

(a) Incorporate secondary education and postsecondary education elements;

(b) Include coherent and rigorous content aligned with challenging academic standards and relevant career and technical content in a coordinated, non-duplicative progression of courses that align secondary education with postsecondary education to adequately prepare students to succeed in postsecondary education;

(c) May include the opportunity for secondary education students to participate in dual or concurrent enrollment programs or other ways to acquire postsecondary education credits; and

(d) Lead to an industry-recognized credential or certificate at the postsecondary level, or an associate or baccalaureate degree.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental study (as defined in this notice) and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study (as defined in this notice) design that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence:

(1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or

(2) One large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (*see http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons).*

[FR Doc. 2011–11650 Filed 5–11–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE AND TIME: Tuesday, May 31, 2011, 10 a.m. EDT through Tuesday, June 14, 2011, 10 a.m. EDT.

PLACE: EAC Standards Board Virtual Public Forum at *http://www.eac.gov/virtual_public_forum.aspx.* Once at the main page of EAC's Web site, viewers should click the link to the Virtual Public Forum. The virtual public forum will open on Tuesday, May 31, 2011, at 10 a.m. EDT and will close on Tuesday, June 14, 2011, at 10 a.m. EDT. The site will be available 24 hours per day during that 14-day period.

PURPOSE: The EAC Standards Board will review and provide comment on the TGDC's resolutions from the January 2011 TGDC meeting, with a focus on Software Independence, to provide election official feedback to NIST and the TGDC.

The EAC Standards Board Virtual Public Forum was established to enable the Standards Board to provide comment in an efficient manner in a public forum, including being able to review and discuss draft documents when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 14-day forum of May 31–June 14, 2011. Members will post comments about TGDC's work related to Software Independence to provide election official feedback to the TGDC and NIST.

This activity is open for public observation. The public may view the Proceedings of this special forum by visiting the EAC Standards Board Virtual Public Forum at *http://www.eac.gov/virtual_public_forum.aspx* any time between Tuesday, May 31, 2011, 10 a.m. EDT and Tuesday, June 14, 2011, 10 a.m. EDT. If it is determined by the chair of the

Standards Board that the meeting period will be extended, an amended notice will be posted in the **Federal Register** and on the EAC Web site at *http://www.eac.gov* for an extension of five days or more. Any shorter extension will only be posted at *http://www.eac.gov* as posting in the **Federal Register** will not be practicable. The public also may view the TGDC's work related to Software Independence, which will be posted on EAC's Web site beginning May 31, 2011. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov* and by copying Sharmili Edwards at *sedwards@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of Section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Gineen M. Bresso,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 2011–11840 Filed 5–10–11; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2794–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Response to Deficiency Letter of Midwest Independent Transmission System Operator, Inc.

Filed Date: 04/29/2011.

Accession Number: 20110429–5585.

Comment Date: 5 p.m. Eastern Time on Friday, May 20, 2011.

Docket Numbers: ER11–3339–001.

Applicants: Freepoint Commodities, LLC.

Description: Freepoint Commodities, LLC submits tariff filing per 35.17(b): Freepoint Commodities, LLC Substitute MBR Tariff to be effective 5/12/2011.

Filed Date: 05/04/2011.

Accession Number: 20110504–5161.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 25, 2011.

Docket Numbers: ER11–3520–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of 1st Revised Rate Schedule FERC No. 158, a Facilities Charge Agreement for Baden Pumping Station between PG&E and the City and County of San Francisco.

Filed Date: 05/04/2011.

Accession Number: 20110504–5172.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 25, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–11592 Filed 5–11–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0336; FRL– 8873–6]

Department of Homeland Security; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the Department of Homeland Security. The Department of Homeland Security will work with OPP pursuant to the *Homeland Security Presidential Directives* and the 2009 National Infrastructure Protection Plan.

DATES: The Department of Homeland Security will be given access to this information on or after May 22, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8338; e-mail address: *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0336. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Details of Transfer

EPA is announcing that some pesticide related information submitted to EPA's Office of Pesticide Programs (OPP), pursuant to FIFRA and FFDCA, including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the Department of Homeland Security in accordance with 40 CFR 2.209(c). Access to this information is needed as part of ongoing work between the Department of Homeland Security and OPP under the authority of the Homeland Security Presidential Directives (*http://www.dhs/gov/xabout/laws/editorial_0607.shtm*) and the 2009 National Infrastructure Protection Plan. (*http://www.dhs.gov/xlibrary/assets/NIPP_Plan.pdf*) Some of this information has been claimed as confidential or may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

List of Subjects

Environmental protection, Business and industry, Government property, Security measures.

Dated: April 21, 2011.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–11552 Filed 5–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:32 a.m. on Tuesday, May 10, 2011, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Director Thomas J. Curry (Appointive), concurred in by Director John G. Walsh (Acting Comptroller of the Currency), Vice Chairman Martin J. Gruenberg, and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 10, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–11789 Filed 5–10–11; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Blue Carrier Line, Inc. (NVO), 157 Broad Street, #305, Red Bank, NJ 07701, *Officer:* Mary (Mickey) McKenna-O'Brien, President/Vice-President/Secretary/Treasurer, (Qualifying Individual), *Application Type:* QI Change.

KG & Dons Express Shipping Import Inc. (NVO & OFF), 491 East 165th Street, Bronx, NY 10456, *Officers:* Sampson S. Nyarko, President (Qualifying Individual), Derrick Agyennim, Secretary, *Application Type:* New NVO & OFF License.

Sapia Logistics, Inc. (NVO & OFF), 1331 Gemini Street, Suite #103, Houston, TX 77058, *Officers:* Vernon Darko, President, (Qualifying Individual), Eric Miller, Vice President, *Application Type:* New NVO & OFF License.

Dated: May 6, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–11603 Filed 5–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
015083F	Gandhi International Shipping, Inc., 2358 W. Devon Avenue, Chicago, IL 60659.	March 31, 2011.
019908NF	International Trade Management Group, LLC dba ITM Logistics dba Patriot Lines, 611 Live Oak Drive, McLean, VA 22101.	February 21, 2011.
022665N	Pacific Glory USA, Inc., 5673 Old Dixie Hwy., Suite 102, Forest Park, GA 30297.	March 31, 2011.

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2011–11606 Filed 5–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 4422F.
Name: C & C Group, Inc.
Address: 1928 NW. 82nd Avenue, Miami, FL 33126.
Order Published: FR: 4/20/11 (Volume 76, No. 76, Pg. 22106).

License Number: 017330N.
Name: Geomarine Shipping Inc.
Address : 27 Cambridge Road, East Rockaway, NY 11518.
Order Published: FR: 3/23/11 (Volume 76, No. 56, Pg. 16422).

License Number: 017511N.
Name : Royal Cargo Line, Inc.
Address: 1928 NW. 82nd Avenue, Miami, FL 33126.
Order Published: FR: 5/5/11 (Volume 76, No. 87, Pg. 25692).

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2011–11600 Filed 5–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 003152NF.
Name: Cargo Crating Company, Ltd. dba Cargo, Shipping International dba Cargo, Forwarding International.
Address: 6605 Rankin Road, Humble, TX 77396.
Date Revoked: April 1, 2011.
Reason: Failed to maintain valid bonds.

License Number: 018434F.
Name: K & S Freight Systems, Inc.
Address: 2801 NW. 74th Avenue, Suite 219, Miami, FL 33122.
Date Revoked: April 5, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019374NF.
Name: Agents' House International, Inc.
Address: 2825 N. 10th Street, St. Augustine, FL 32164.
Date Revoked: April 8, 2011.
Reason: Failed to maintain valid bonds.

License Number: 019457N.
Name: Veco Logistics USA, Inc.
Address: 5523 NW. 72nd Avenue, Miami, FL 33166.
Date Revoked: April 26, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020119F.
Name: Express Forwarding, Inc.
Address: 12738 N. Florida Avenue, Tampa, FL 33612.
Date Revoked: April 18, 2011.
Reason: Failed to maintain valid bonds.

License Number: 020315NF.
Name: World Cargo Express, Inc.
Address: 9133 S. La Cienega Blvd., Suite 245, Inglewood, CA 90301.
Date Revoked: April 18, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021345NF.
Name: NYK Logistics (Americas) Inc. dba Double, Wing Express dba New Wave Logistics (USA).
Address: 2417 E. Carson Street, Suite 200, Long Beach, CA 90810.
Date Revoked: April 6, 2011.
Reason: Surrendered license voluntarily.

License Number: 020513N.
Name: Oriental Camden Inc. dba Embarque Camden.
Address: 2011 River Road, Camden, NJ 08105.
Date Revoked: April 14, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020677N.
Name: Prominence Cargo Service, Inc.
Address: 17595 Almahurst Road, Suite 201, City of Industry, CA 91748.
Date Revoked: April 24, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021354N.
Name: Jaemar International Inc.
Address: 6420 Richmond Avenue, Suite 440, Houston, TX 77057.
Date Revoked: April 24, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021470N.
Name: Pacer Container Line, Inc.
Address: 6805 Perimeter Drive, Dublin, OH 43016.
Date Revoked: April 21, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022268NF.
Name: USI–USA, Inc.
Address: 13030 Fellowship Way, Reno, NV 89511.
Date Revoked: April 22, 2011.
Reason: Failed to maintain valid bonds.

License Number: 022370NF.
Name: JP Shipping and Son, Inc.
Address: 7860 NW 80th Street, Medley, FL 33166.
Date Revoked: April 25, 2011.
Reason: Failed to maintain valid bonds.

License Number: 022416NF.
Name: Transaction Publishers, Inc. dba Express Book Freight a Division of Transaction Publishers, Inc.
Address: 35 Berrue Circle, Piscataway, NJ 08854–8042.
Date Revoked: March 30, 2011.
Reason: Surrendered license voluntarily.

Tanga S. FitzGibbon,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2011–11602 Filed 5–11–11; 8:45 am]

BILLING CODE 6730–01–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 June 6, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Leackco Bank Holding Company, Inc.,* Wolsey, South Dakota; to acquire 100 percent of the voting shares of and merge with Kingsbury Bank Holding Company, and thereby indirectly acquire voting shares of Peoples State Bank, both in De Smet, South Dakota.

Board of Governors of the Federal Reserve System, May 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–11636 Filed 5–11–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through October 31, 2014, the current PRA clearance for information collection requirements contained in the Commission's Gramm-Leach-Bliley Financial Privacy Rule ("GLB Privacy Rule" or "Rule"). The current clearance expires on October 31, 2011.

DATES: Comments must be submitted on or before July 11, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. *Write:* "FTC File No. P085405" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/glbprivacyrulepra* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine White, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the GLB Privacy Rule, 16 CFR Part 313 (OMB Control Number 3084–0121).

The FTC invites comments on: (1) 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) 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The GLB Privacy Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the Gramm-Leach-Bliley Act, 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping.

The FTC, together with the Federal financial agencies,[1] adopted a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules. The model privacy form was available for use beginning in January 2010 and, as of January 1, 2011, is the only safe harbor available for compliance with the privacy rules. 74 FR 62890 (Dec. 1, 2009).

In order to ease the burden on entities that wanted to adopt the new model privacy form, the agencies developed an "Online Form Builder" that an entity can download and use to develop and print customized versions of a model

[1] Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and the Securities and Exchange Commission.

consumer privacy notice. The Online Form Builder is available with several options. Easy-to-follow instructions for the form builder will guide an institution to select the version of the model form that fits its practices, such as whether the institution provides an opt-out for consumers. The agencies announced the availability of this tool on April 15, 2010: *http://www.ftc.gov/opa/2010/04/glb.shtm.*

Estimated annual hours burden: As noted in previous burden estimates for the GLB Privacy Rule, determining the PRA burden of the Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a Federal financial regulatory agency. *See* 15 U.S.C. 6805 (committing to the Commission's jurisdiction entities that are not specifically subject to another agency's jurisdiction).

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the GLB Privacy Rule. In addition, some entities may use highly automated means to provide the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time that may be necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Staff retains its prior estimate of the number of entities each year that will address the GLB Privacy Rule for the first time (5,000) and its estimate of established entities already familiar with the Rule (100,000). While the number of established entities familiar with the Rule would theoretically increase each year with the addition of new entrants, staff retains its previous estimate of established entities given that a number of the established entities will close in any given year, and also given the difficulty of establishing a more precise estimate.

The combined effect of the availability of the model privacy form and the Online Form Builder has caused the FTC to revise its previous hourly burden estimates. Staff believes that the model form and form builder reduces the hours per new entrant respondent required for "Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures)." In the FTC's 2008 clearance request, staff estimated 5 hours of clerical time and 10 hours of professional/technical time for this category. Staff now believes that the adoption of the model privacy form and the availability of the form builder simplify and automate much of this work, reducing the time needed to create the disclosure documents to 1 hour of clerical time and 2 hours of professional/technical time, a total savings of 12 burden hours per new entrant. If all 5,000 new entrants were to use the model privacy form and form builder, an estimated 60,000 hours would be saved.

Similarly, the FTC is adjusting its previous estimates of the burden hours for established entities. The 2008 PRA clearance for the privacy rule estimated 15 hours of clerical time and 5 hours of professional/technical time associated with "Changes to privacy policies and related disclosures" for approximately 1,000 established entity respondents, based on staff's assumption that no more than 1% of the estimated 100,000 established entity respondents would make additional changes to privacy policies at any time other than the occasion of the annual notice; thus, 1,000 entities. Staff believes the adoption of the model privacy form and the availability of the Online Form Builder reduces the time associated with the modification of the notices to 7 hours of clerical time and 3 hours of professional/technical time, a reduction of 10 hours per respondent. If all 1,000 established entities were to use the model form and the Online Form Builder, 10,000 hours would be saved.

The complete burden estimates for new entrants and established entities are detailed in the charts below.

Start-up hours and labor costs for new entrants:

Event	Hourly wage and labor category *	Hours per respondent	Approx. number of respondents	Approx. total annual hrs.	Approx. total labor costs
Reviewing internal policies and developing GLBA-implementing instructions **.	$34.35 Managerial/professional	20	5,000	100,000	$3,435,000
Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	$15.84 Clerical	1	5,000	5,000	79,200
	$35.98 Professional/technical	2		10,000	359,800
Disseminating initial disclosure (including opt out notices).	$15.84 Clerical	15	5,000	75,000	1,188,000
	$35.98 Professional/technical	10		50,000	1,799,000
Total				240,000	6,861,000

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for managerial/professional time (*e.g.,* compliance evaluation and/or planning), professional/technical time (*e.g.,* designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.,* reproduction tasks, filing, and, where applicable to the given event, typing or mailing). See BLS National Compensation Survey: Occupational Earnings in the United States, 2009, Table 1, available at *http://www.bls.gov/ncs/ocs/sp/nctb1344.pdf* (Management occupations; office and administrative support occupations) and BLS Occupational Employment and Wages—May 2009, Table 3, available at *http://www.bls.gov/news.release/pdf/ocwage.pdf* (Professional, scientific, and technical services). Labor cost totals reflect solely that of the commercial entities affected. Staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** Reviewing instructions includes all efforts performed by or for the respondent to: determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of document and/or electronic disclosures).

Burden hours and costs for established entities:

Burden for established entities already familiar with the Rule predictably would be less than for start-up entities because start-up costs, such as crafting a privacy policy, are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Hourly wage and labor category *	Hours per respondent	Approx. number of respondents **	Approx. total annual hrs.	Approx. total labor costs
Reviewing GLBA-implementing policies and practices.	$34.35 Managerial/professional	4	70,000	280,000	$9,618,000
Disseminating annual disclosure	$15.84 Clerical	15	70,000	1,050,000	16,632,000
	$35.98 Professional/technical	5		350,000	12,593,000
Changes to privacy policies and related disclosures.	$15.84 Clerical	7	1,000	7,000	110,880
	$35.98 Professional/technical	3		3,000	107,940
Total				1,690,000	39,061,820

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for managerial/professional time (*e.g.,* compliance evaluation and/or planning), professional/technical time (*e.g.,* designing and producing notices, reviewing and updating information systems), and clerical time (*e.g.,* reproduction tasks, filing, and, where applicable to the given event, typing or mailing). See BLS National Compensation Survey: Occupational Earnings in the United States, 2009, Table 1, available at *http://www.bls.gov/ncs/ocs/sp/nctb1344.pdf* (Management occupations; office and administrative support occupations) and BLS Occupational Employment and Wages—May 2009 Table 3, available at *http://www.bls.gov/news.release/pdf/ocwage.pdf* (Professional, scientific, and technical services). Labor cost totals reflect solely that of the commercial entities affected. Consumers have a continuing right to opt-out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt-out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents is based on the following assumptions: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

As calculated above, the total annual PRA burden hours and labor costs for all affected entities in a given year would be 1,930,000 hours and $45,922,820, respectively.

Estimated Capital/Other Non-Labor Costs Burden: Staff believes that capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (*e.g.,* computers with word processing programs, typewriters, copying machines, mailing capabilities). Most likely, only entities that already have on-line capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

Request For Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 11, 2011. Write "Paperwork Comment: FTC File No. P085405" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. * * *," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/glbprivacyrulepra,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Paperwork Comment: FTC File No. P085405" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 11, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2011–11686 Filed 5–11–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; Docket No. 2011–0079; Sequence 14]

Submission for OMB Review; Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–00XX, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–00XX", Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–00XX", Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions. Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–00XX", Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–00XX.

Instructions: Please submit comments only and cite Information Collection 9000–00XX, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, Acquisition Policy Division, at telephone (202) 501–2658 or via e-mail to *Anthony.robinson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This is a request for a new information collection requirement concerning the Office of Management and Budget (OMB) Control Number 9000–00XX, FAR Case 2008–025, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, (Final Rule). Section 841(a) requires the Administrator for Federal Procurement Policy to develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions, and an associated personal conflicts-of-interest clause or set of clauses.

Under the final rule, contractors are required to notify contracting officers whenever they become aware of any personal conflict-of-interest violations by a covered employee. The objective of the notification requirement is to emphasize the critical importance of integrity in contracting and reduce the occurrence of personal conflict-of-interest violations by contractor employees performing acquisition-related functions.

In addition, contractors have the opportunity, in exceptional circumstances, to request mitigation or waiver of the personal conflict-of-interest standards. The information is used by the Government to evaluate the requested mitigation/waiver.

B. Annual Reporting Burden

Respondents: 460.
Responses per Respondent: 1.
Hours per Response: 4.
Total Burden Hours: 1,840.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–00XX, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, in all correspondence.

Dated: May 6, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–11609 Filed 5–11–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee; Notice of Establishment

Pursuant to Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010) and the Federal Advisory Committee Act, as amended (5 U.S.C. App), the Director,

Centers for Disease Control and Prevention (CDC), announces the establishment of the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee.

The WTC Health Program shall provide, beginning on July 1, 2011: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks; and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks. This advisory committee will review scientific and medical evidence and make recommendations to the WTC Program Administrator on additional WTC Health Program eligibility criteria and additional WTC-related health conditions. The committee may be consulted on other matters as related to and outlined in the Act at the discretion of the WTC Program Administrator.

For information, contact Larry Elliott, Designated Federal Officer, World Trade Center Health Program Scientific/Technical Advisory Committee, National Institute for Occupational Safety and Health, HHS, CINC Building, ROBER Room 141, M/S C46, Cincinnati, Ohio 45226, telephone (513) 533–6891, or fax (513) 533–6826.

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 the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: May 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11698 Filed 5–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns "Using Behavioral Economics to Promote Colorectal Cancer Screening in Disadvantaged Communities, SIP11–041, Feasibility Study to Link Data from the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), the National Program of Cancer Registries (NPCR), and Medicare to Evaluate Screening Practice and Treatment Outcomes of Former NBCCEDP Clients, SIP11–043, Potential for Cancer Screening Interventions for Cancer Survivors Delivered Through Central Cancer Registries, SIP11–044, Panel B," initial review.

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 aforementioned meeting:

Times And Dates: 8:30 a.m.–5:30 p.m., June 1, 2011 (Closed). 8:30 a.m.–5:30 p.m., June 2, 2011 (Closed).

Place: Georgian Terrace Hotel, 659 Peachtree Street, NE., Atlanta, Georgia 30308, *Telephone:* (404) 989–8305.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Using Behavioral Economics to Promote Colorectal Cancer Screening in Disadvantaged Communities, SIP11–041, Feasibility Study to Link Data from the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), the National Program of Cancer Registries (NPCR), and Medicare to Evaluate Screening Practice and Treatment Outcomes of Former NBCCEDP Clients, SIP11–043, Potential for Cancer Screening Interventions for Cancer Survivors Delivered Through Central Cancer Registries, SIP11–044, Panel B," initial review.

Contact Person For More Information: Brenda Colley Gilbert, PhD, M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, *Telephone:* (770) 488–6295, *BJC4@cdc.gov.*

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2011.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–11683 Filed 5–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HIV/AIDS Bureau Policy Notice 11–01 (Replaces Policy Notice 99–02)

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Final Notice.

SUMMARY: The Health Resources and Services Administration, HIV/AIDS Bureau (HAB) Policy Notice 99–02 established policies for the use of Ryan White HIV/AIDS Program funds authorized under Title XXVI of the Public Health Service (PHS) Act, for housing referral services and short-term or emergency housing needs. Amendment #1 to Policy Notice 99–02, effective March 27, 2008, modified Policy Notice 99–02 by imposing a 24-month cumulative cap on short-term and emergency housing assistance. The limit on benefits would have taken effect on March 27, 2010, and would have impacted individuals who were users of the funds for housing assistance. HRSA received comments from the public concerning the potential impact of the cap and the threat to the ability of clients receiving Ryan White HIV/AIDS Program funded services to receive housing services. In response, HRSA's Administrator directed that Policy Notice 99–02 Amendment #1 be rescinded, as published in the February 10, 2010, **Federal Register** notice, Volume 75, Issue 27, pages 6672–6673. In addition, the notice indicated that HRSA was conducting a comprehensive review of the Housing Policy. As a result of a thorough vetting and comprehensive review, HRSA is issuing a final notice of Housing Policy Notice 11–01 which replaces HAB Policy Notice 99–02, effective May 12, 2011.

SUPPLEMENTARY INFORMATION: On February 10, 2010, HRSA rescinded Amendment #1 to Policy Notice 99–02 effective immediately, as published in the **Federal Register**. Grantees were advised that HRSA did not require enforcement of the cap for beneficiaries that might have been at or near the 24-month limit on receipt of funds used for short-term and emergency housing

assistance. HRSA announced that a comprehensive review of the Housing Policy would continue and HRSA's Administrator would continue to consider all aspects of the policy.

Comprehensive Review of the Housing Policy

HRSA received numerous letters from consumer and housing advocates expressing their concerns regarding the potential effect on individuals reaching the 24-month cap to receive funding used for housing services. HRSA's Administrator responded to these concerns by conducting face-to-face meetings with housing advocates, consumers, and HIV/AIDS stakeholders/organizations. In addition, Ryan White HIV/AIDS Program Grantees were asked to submit their views on the Housing Policy's lifetime 24-month cap per household. Consequently, HAB collaborated with other federal agencies and discussed mutual concerns with the Assistant Secretary of the U.S. Department of Housing and Urban Development and the Director of Housing Opportunities for Persons with AIDS.

HRSA/HAB Policy Considerations and Recommendations

HAB's Associate Administrator solicited comments from all Part A, B and D Grantees asking them to review five principles that were under consideration for the revised Housing Policy and to provide comments, concerns, and additional considerations by May 21, 2010. The five principles were as follows:

1. Strengthen linkages to the U.S. Department of Housing and Urban Development's (HUD) programs, as well as state and local housing resources to provide longer-term assistance;
2. Minimize housing disruptions for people living with HIV/AIDS;
3. Integrate housing with a broader range of supports that collectively support individuals in maintaining their health;
4. Provide flexibility to respond to exceptional circumstances; and
5. Minimize the burden on Ryan White providers who are responsible for assisting HAB to implement any housing policy.

There were four responses—two from Ryan White HIV/AIDS Program Part A Grantees, one from a Part B Grantee and one letter from the National AIDS Housing Coalition's Executive Director. These responses supported the extension of funding for housing services beyond the 24-month cap due to exceptions, *i.e.,* "Grantees allowing transitional housing of greater than 24 month in duration must review their decision periodically to assess whether this standard serves as a significant barrier to access to housing services for new clients."; "It is recognized that a transitional housing limit of 24 month may be a significant barrier for certain populations, for example a multiply-diagnosed client who has been in housing before, but has lapsed and needs housing support while in treatment and recovery."

Other considerations included: (1) HRSA/HAB consideration to promote decision making at the jurisdictional level based on needs assessment, consistent with the Ryan White HIV/AIDS Program legislative mandates, and (2) acknowledging the changes in the 2006 Ryan White HIV/AIDS Program reauthorization that limited funding for support services to 25 percent of available service dollars. As a result of this comprehensive review, HAB recommended issuance of a revised Housing Policy.

HRSA HAB Policy Notice 11–01 (Replaces 99–02)

Document Title: The Use of Ryan White HIV/AIDS Program Funds for Housing Referral Services and Short-term or Emergency Housing Needs.

The following policy establishes guidelines for allowable housing-related expenditures under the Ryan White HIV/AIDS Program. The purpose of all Ryan White HIV/AIDS Program funds is to ensure that eligible HIV-infected persons and families gain or maintain access to medical care.

A. Funds received under the Ryan White HIV/AIDS Program (Title XXVI of the Public Health Service Act) may be used for the following housing expenditures:

i. Housing referral services defined as assessment, search, placement, and advocacy services must be provided by case managers or other professional(s) who possess a comprehensive knowledge of local, state, and federal housing programs and how these programs can be accessed; or

ii. Short-term or emergency housing defined as necessary to gain or maintain access to medical care and must be related to either:

a. Housing services that include some type of medical or supportive service: including, but not limited to, residential substance treatment or mental health services (not including facilities classified as an Institution for Mental Diseases under Medicaid), residential foster care, and assisted living residential services; or

b. Housing services that do not provide direct medical or supportive services, but are essential for an individual or family to gain or maintain access and compliance with HIV-related medical care and treatment; necessity of housing services for purposes of medical care must be certified or documented.

B. Short-term or emergency assistance is understood as transitional in nature and for the purposes of moving or maintaining an individual or family in a long-term, stable living situation. Thus, such assistance cannot be permanent and must be accompanied by a strategy to identify, relocate, and/or ensure the individual or family is moved to, or capable of maintaining, a long-term, stable living situation.

C. Housing funds cannot be in the form of direct cash payments to recipients or services and cannot be used for mortgage payments.

D. The Ryan White HIV/AIDS Program must be the payer of last resort. In addition, funds received under the Ryan White HIV/AIDS Program must be used to supplement, but not supplant funds currently being used from local, state, and federal agency programs. Ryan White HIV/AIDS Program Grantees must be capable of providing HAB with documentation related to the use of funds as the payer of last resort and the coordination of such funds with other local, state, and federal funds.

E. Ryan White HIV/AIDS Program Grantees and local decision making planning bodies, *i.e.* Part A and Part B, are strongly encouraged to institute duration limits to provide transitional and emergency housing services. HUD defines transitional housing as 24 month, and HRSA/HAB recommends that grantees consider using HUD's definition as their standard.

F. Grantees must develop mechanisms to allow newly identified clients access to housing services.

G. Upon request, Ryan White HIV/AIDS Program Grantees must provide HAB with an individualized written housing plan, consistent with this Housing Policy, covering each client receiving short term, transitional and emergency housing services.

H. Housing-related expenses are limited to Part A, Part B, and Part D of the Ryan White HIV/AIDS Program and are not allowable expenses under Part C. Part A and Part B Grantees must adhere to the Core Medical Services requirement; only 25 percent of Ryan White HIV/AIDS Program funding may be used for support services without a waiver.

Dated: May 5, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–11649 Filed 5–11–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 9, 2011, 1 p.m. to 5 p.m. EDT; June 10, 2011, 9 a.m. to 12 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, June 9 from 1 p.m. to 5 p.m. (EDT) and on Friday, June 10 from 9 a.m. to 12 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–800–369–3104 on June 9 and 10 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the June meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in attending the meeting in person or providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov*. Requests should contain the name, address, telephone number, e-mail address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by e-mail, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov*.

Dated: May 6, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–11648 Filed 5–11–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Natural Products RFA.

Date: July 21–22, 2011.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martina Schmidt, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11664 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; IEARDA.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11666 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Risk, Prevention and Intervention for Addictions Study Section, June 2, 2011, 8 a.m. to June 3, 2011, 5 p.m., Mayflower Park Hotel, 405 Olive Way, Seattle, WA, 98101 which was published in the **Federal Register** on April 25, 2011, 76 FR 22907–22910.

The meeting will be held at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11667 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Fogarty International Advisory Board, May 25, 20011, 2 p.m. to May 26, 2011, 3 p.m., National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892 which was published in the **Federal Register** on April 4, 2011, 76 FR 18567.

This notice is being amended to one day now being May 26, 2011 with a closed session from 8:30 a.m. until 9:30 a.m. and the open session for the remainder of the day. The meeting will be held at the Lawton Chiles International House. The meeting is partially closed to the public.

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11665 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biostatistical Methods and Research Design Study Section, June 9, 2011, 8 a.m. to June 10, 2011, 5 p.m., Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405 which was published in the **Federal Register** on May 3, 2011, 76 FR 24897–24899.

The meeting will be one day only June 9, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11663 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Member Conflict:* Enabling Bioanalytical and Imaging Technologies.

Date: June 1, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Member Conflict:* Retina Development and Pathology.

Date: June 1, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group, Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 2–3, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7801, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Cardiovascular and Sleep Epidemiology Study Section.

Date: June 2, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: J. Scott Osborne, PhD, MPh, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.

Date: June 7, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Member Conflict:* CMIP–MEDI–BMIT (A & B) Medical Imaging Applications.

Date: June 21, 2011.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.

Date: June 23–24, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Gene and Drug Delivery Systems Study Section.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: June 23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Small Business:* Risk Prevention and Health Behavior.

Date: June 23–24, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: West Chicago Lakeshore, 644 North Lake Shore Drive, Chicago, IL 60611.

Contact Person: Claire E.Gutkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *Member Conflict:* Environmental Causes for Retinopathy.

Date: June 23–24, 2011.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Etiology Overflow.

Date: June 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, *RFA Panel:* Understanding and Promoting Health Literacy.

Date: June 24, 2011.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Rebecca Henry, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301–435–1717, *henryrr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11661 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Mitochondrial Biomarkers Review Meeting.

Date: June 2, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–11662 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of final actions under the *NIH Guidelines* and notice of an addition to Appendix D of the *NIH Guidelines.*

SUMMARY: A proposal to certify *Kluyveromyces lactis* as a host-vector 1 system has been reviewed by the NIH

Recombinant DNA Advisory Committee (RAC) and approved by the NIH Director. This decision is based upon the determination that the *K. lactis* host-vector 1 system affords a moderate degree of biological containment equal to other certified host-vector 1 systems presently listed in the *NIH Guidelines.*

Moreover, it has been determined that certain research with this host-vector system does not present a significant risk to health and the environment and therefore will be exempt from the *NIH Guidelines* (See Section III–F–6 and Appendix C). Appendix C has been modified to indicate the nature of the research that is exempt when performed in a *K. lactis* certified host-vector 1 system.

In addition, the Office of Biotechnology Activities is updating Appendix D of the *NIH Guidelines* to include additional lines of experimentation approved by the NIH Director; in this case an experiment involving the introduction of tetracycline resistance into *Chlamydia trachomatis* that falls under Section III–A–1–a of the *NIH Guidelines.*

DATES: The final action regarding certification of a new host-vector 1 system is effective April 14, 2011.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, Maryland 20892; e-mail at *oba@od.nih.gov,* or telephone at 301–496–9838. The NIH OBA Web site is located at: *http://oba.od.nih.gov/oba/.*

SUPPLEMENTARY INORMATION: Under the *NIH Guidelines,* certification of a host-vector 1 system is based on assessment of the biological containment provided by the recombinant DNA vector (plasmid or virus) and the host (bacterial or lower eukaryote) in which the vector is propagated in the laboratory. Per the *NIH Guidelines,* a combination of vector and host can be certified based on the ability of this system to provide biological containment so that "the following types of 'escape' are minimized: (i) Survival of the vector in its host outside of the laboratory and (ii) transmission of the vector from the propagation host to other non-laboratory hosts" (see Appendix I–I). Host-vector 1 systems provide a moderate level of containment (Appendix I). Most low volume (< 10 liters) research with host-vector 1 systems is exempt from the *NIH Guidelines* and therefore does not require registration with the IBC. High volume (> than 10 liters) research with a certified host-vector 1 system requires IBC review; however, the required containment practices are not as comprehensive as those required for similar research not involving a host-vector 1 system. For example, because of the biological containment provided by the host-vector 1 system, large volume research in a host-vector 1 system does not require all recombinant material to be handled in a closed system.

In making a determination regarding whether a host-vector combination provides moderate biological containment and therefore can appropriately be certified as a host-vector 1 system, the following information is considered: the host's natural habitat and growth requirements; its physiologic properties, particularly reproduction, survival, and mechanisms for exchange of genetic information; and the history of the particular strains and vectors to be used, including mutations that render this organism less able to survive or transmit genetic information.

The Office of Biotechnology Activities received a request from New England BioLabs (NEB) to certify *K. lactis* as a host-vector 1 system under the *NIH Guidelines* and to exempt certain research with this host-vector system. Specifically, NEB requested certification of two parental, laboratory-adapted lineages of *K. lactis.* One is a strain selected by the *K. lactis* research community for genome sequencing and the second is a *K. lactis* strain originally isolated in the 1980s from a dairy process. This latter strain has been used as a host strain in the food industry for heterologous protein expression. In addition, NEB has created host strains that are genetically modified through deletion of one or more genes, including genes involved in the synthesis of cellular components (*e.g.,* those involved in biosynthetic activities and modification of host proteins: proteases and glycosylases). Most of the vectors proposed by NEB are plasmids derived from pGBN1, a *K. lactis-Escherichia coli* shuttle plasmid containing selectable markers for growth in both organisms. The pGBN1-derived plasmids stably integrate into the *LAC4* region of the *K. lactis* chromosome. Other available plasmids for use in *K. lactis* are derived from the *Saccharomyces cerevisiae* 2-micron plasmid and remain stable in an episomal state with a copy number of about 50.

NEB noted that *K. lactis* has a 20+ year history of safe use as an expression system in regulated food industry processes. NEB further stated that they had found *K. lactis* to provide an excellent system for heterologous protein expression. With regards to its appropriateness for certification as a host-vector 1 system, *K. lactis* is closely related to *S. cerevisiae,* which is certified as a host-vector 1 system. *K. lactis,* however, is unable to exchange genetic material with this closely related yeast. *K. lactis* can exchange genetic material only with itself and in rare cases with other *Kluyveromyces* species, thus affording an additional degree of biologic containment.

On November 15, 2010, background information on these actions and instructions for submitting public comment were published in the **Federal Register** (75 FR 69687). No public comments were received regarding the proposal to certify *K. lactis* as a host-vector 1 system. On December 7, 2010, the RAC discussed whether there are sufficient data as outlined in Appendix I–II–B–1 of the *NIH Guidelines* to certify *K. lactis* and its associated plasmids as a host-vector 1 system.

In its assessment of the request, the RAC considered a number of factors, including that: (1) *K. lactis* is a natural and indispensable component of cultured dairy processes (including yogurt, cheese and buttermilk) and has been used widely in the food industry to express heterologous proteins *(e.g.* lactase which has been used to treat lactose intolerance); (2) its optimum growth is at 30 °C, thereby limiting its survival within humans and most other warm-blooded animals; (3) genetic exchange is limited to a few *Kluyveromyces* species, which rarely cause any disease in humans (with the exception of rare reports of superficial skin disease with *K. marxianus,* a closely related yeast), and (4) there are no documented cases of disease or toxicity attributed to *K. lactis.* With regard to the plasmids proposed for certification, the Committee noted that plasmids that can replicate in *K. lactis* exist in low copy number, will not be efficiently transferred between *K. lactis* strains, and are not transferrable to other yeast via mating (*K. lactis* is unable to mate with other yeast). In sum, it was determined that *K. lactis* meets the requirements of a host-vector 1 system.

The RAC recommended that laboratory-adapted strains of *K. lactis* should be certified as a host-vector 1 system, as it was the Committee's assessment that laboratory adapted strains grown under optimized laboratory conditions will be at a selective disadvantage, and thus less competitive compared to strains isolated from the wild. Of note, even wild-type *K. lactis* has a limited natural habitat and growth requirement, mainly

restricted to lactose-rich environments. Plasmids that can be used in *K. lactis* are not capable of replicating to high copy numbers. Due to the additional containment and corresponding vastly reduced risk to either human health or the environment afforded by host-vector 1 systems, research with this system will be exempt from the *NIH Guidelines* unless the system is: (i) Capable of producing a molecule that is toxic to vertebrates; (ii) contains DNA from a Risk Group 3 or 4 organism (see Appendix B of the *NIH Guidelines*); or (iii) will be employed for large scale (> 10 liters) experimentation.

The following new appendix (C–IV) will be added to Appendix C of the *NIH Guidelines.* The current Appendices C–IV through C–VIII (and sub-appendices) will be renumbered to Appendices C–V through C–IX, respectively.

Appendix C–IV Kluyveromyces Host-Vector Systems

Experiments involving *Kluyveromyces lactis* host-vector systems, with the exception of experiments listed in Appendix C–IV–A, are exempt from the *NIH Guidelines* provided laboratory-adapted strains are used (*i.e.* strains that have been adapted to growth under optimal or defined laboratory conditions). For these exempt experiments, BL1 physical containment is recommended. For large-scale fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the Institutional Biosafety Committee may specify higher containment if deemed necessary.

Appendix C–IV–A Exceptions

The following categories are not exempt from the *NIH Guidelines:* (i) Experiments described in Section III–B, which require NIH/OBA and Institutional Biosafety Committee approval before initiation; (ii) experiments involving DNA from Risk Groups 3, 4, or restricted organisms (see Appendix B, *Classification of Human Etiologic Agents on the Basis of Hazard,* and Sections V–G and V–L, *Footnotes and References of Sections I through IV*) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–D–2 with prior Institutional Biosafety Committee review and approval; (iii) large-scale experiments (*e.g.,* more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F, *Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates*).

Additions to Appendix D of the NIH Guidelines

In accordance with Section III–A of the *NIH Guidelines,* Appendix D of the *NIH Guidelines* will be modified as follows to reflect a recent approval for the transfer of a drug resistance trait to a microorganism.

Appendix D–118. Dr. Harlan Caldwell at the Rocky Mountain Laboratories may conduct experiments to deliberately introduce a gene encoding tetracycline resistance into *Chlamydia trachomatis* serovar L2. This approval is specific to Dr. Caldwell and research with this resistant organism may only occur under the conditions as specified by the NIH Director. This approval was effective as of April 26, 2010.

Dated: May 6, 2011.

Jacqueline Corrigan-Curay,

Acting Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. 2011–11668 Filed 5–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120]

Intent To Request Renewal From OMB of One Current Public Collection of Information; Imposition and Collection of Passenger Civil Aviation Security Service Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0001, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves air carriers maintaining an accounting system to account for the passenger civil aviation security service fees collected and reporting this information to TSA on a quarterly basis, as well as retaining the data used for these reports for a six-year rolling period.

DATES: Send your comments by July 11, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0001; Imposition and Collection of Passenger Civil Aviation Security Service Fees. In accordance with the Aviation Transportation Security Act (ATSA) (49 U.S.C. 44940) and relevant TSA Regulations (49 CFR part 1510), TSA imposes a Passenger Civil Aviation Security Service Fee (September 11th Security Fee) on passengers of both foreign and domestic air carriers ("air carriers") on flights originating at airports in the United States to assist with aviation security costs.

The September 11th Security Fee is used to help defray the costs of providing Federal civil aviation security services. This information collection requires air carriers to submit to TSA the amount of September 11th Security Fees they have imposed, collected, remitted, and refunded. The retention of this data is necessary for TSA to impose, collect, and regulate the Security Fee.

Additionally, TSA collects the information to monitor carrier compliance with the fee requirements and for auditing purposes. Air carriers are required to retain this information for a six-year rolling period. For instance, air carriers must keep the information collected during Fiscal Year 2008 until the expiration of Fiscal Year 2014.

TSA rules require air carriers to impose and collect the fee on passengers, and to submit the fee to TSA by the final day of the calendar month following the month in which the fee was collected. 49 CFR 1510.13. Air carriers are further required to submit quarterly reports to TSA, which provide an accounting of the fees imposed, collected, and refunded to passengers and remitted to TSA. 49 CFR 1510.17. The fee amount collected from each passenger is $2.50 per enplanement originating in the United States. Passengers may not be charged for more than two enplanements per one-way trip or four enplanements per round trip. 49 CFR 1510.5.

Each air carrier that collects security service fees from more than 50,000 passengers annually is also required under 49 CFR 1510.15 to submit to TSA an annual independent audit, performed by an independent certified public accountant, of its security service fee activities and accounts. Although the annual independent audit requirements were suspended on January 23, 2003 (68 FR 3192), TSA conducts its own audits of the air carriers. 49 CFR 1510.11. Notwithstanding the suspension of the audit requirements, air carriers must establish and maintain an accounting system to account for the security service fees imposed, collected, refunded and remitted. 49 CFR 1510.15(a).

TSA is seeking renewal of this collection to require air carriers to continue submitting the quarterly reports to TSA, and to require air carriers to retain the information for a six-year rolling period. This requirement includes retaining the source information for the quarterly reports remitted to TSA, and the calculations and allocations performed to remit reports to TSA. Should the auditing requirement be reinstated, the requirement would include information and documents reviewed and prepared for the independent audit; the accountant's working papers, notes, worksheets, and other relevant documentation used in the audit; and, if applicable, the specific information leading to the accountant's opinion, including any determination that the accountant could not provide an audit opinion. Although TSA suspended the independent audits, TSA conducts audits of the air carriers, and therefore, requires air carriers to retain and provide the same information as required for the quarterly reports and independent audits.

TSA estimates that 196 total respondent air carriers will spend approximately 1 hour per quarterly report, for a total of 784 hours per year. Should TSA reinstate the audit requirement, TSA estimates that 105 air carriers would be required to submit annual audits, on which they would spend approximately 20 hours for preparation, for a total of 2,100 hours annually. TSA estimates the total for quarterly reports and annual audits is 2,884 hours.

For the quarterly reports and TSA's audits, TSA estimates that the 196 air carriers will each incur an average cost of $462.88 annually. This estimate includes $100 in staff time for preparation of the reports (at $25 per hour, each quarterly report is estimated to take 1 hour to prepare), $361.20 in annual records storage related costs, and $1.68 for postage for the report (4 stamps at 42 cents each). TSA estimates an aggregate annual cost of $90,724.48 for the airlines to prepare, submit, and store quarterly reports, and an aggregate cost of $272,173.44 for the three years of the renewal period.

Should TSA reinstate the annual audit requirement, TSA estimates total annual cost for this collection at $315,000 (105 air carriers, at an estimated rate of $150 per hour, at 20 hours per report). For the three-year period of the renewal, TSA estimates the total aggregate cost of the annual audit requirement to be $945,000, and $1,217,173.44 for the three-year extension of both quarterly reports and annual audits.

Issued in Arlington, Virginia, May 5, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–11652 Filed 5–11–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below that TSA will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves requesting, name, contact information, airline employee number, and Social Security number (last four digits) from flight and cabin crew members of air carriers to verify employment status to confirm eligibility to participate in voluntary advanced self-defense training provided by TSA. Eligible training participants are flight and cabin crew members of an airline conducting scheduled passenger operations. See 49 U.S.C. 44918. Additionally, each participant is asked to complete a voluntary course evaluation form after the training concludes.

DATES: Send your comments by July 11, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking to renew the ICR, currently approved under OMB number 1652–0028, to continue compliance with a statutory mandate. Under Title VI, Sec. 603 of Vision 100—Century of Aviation Reauthorization Act (Pub. L 108–176, 117 Stat. 2490, 2563, Dec. 12, 2003), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation. See 49 U.S.C. 44918(b).

TSA requests this renewal so that TSA may continue confirming participants' eligibility and attendance for the training program, as well as to continue assessing training quality. TSA collects limited biographical information from flight and cabin crew members to confirm their eligibility to participate in this training; the information requested is the participant's name, contact information, airline employee number, and the last four digits of his or her Social Security number. TSA confirms the eligibility of the participant by contacting the participant's employer. Attendance is confirmed by comparing registration information against a sign-in sheet provided in the classroom. TSA also asks participants to complete an anonymous and voluntary evaluation form after participation in the training to assess the quality of the training. The estimated number of annual respondents is 3,000 and estimated annual burden is 750 hours. There is no estimated annual cost burden to respondents.

Issued in Arlington, Virginia, on May 5, 2011.

Joanna Johnson,

Paperwork Reduction Officer, Office of Information Technology.

[FR Doc. 2011–11655 Filed 5–11–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2009–0036]

Notice of Domestic Interested Party Petitioner's Desire To Contest the Tariff Classification Determination of Wickless Wax Objects

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

ACTION: Notice of petitioner's desire to contest classification determination.

SUMMARY: On February 18, 2009, the National Candle Association ("petitioner") filed a domestic interested party petition pursuant to section 516, Tariff Act of 1930, as amended, and 19 CFR part 175 regarding the tariff classification of imported wickless wax objects identified in entry documents as "wax cylinders", "wax pillars", "wax blocks", "wax forms", "candle jars", "candle holders", "religious candle holders", or "religious candle jars." The petition challenged Customs and Border Protection's ("CBP's") classification of wickless wax objects under heading 9602, of the Harmonized Tariff Schedule of the United States ("HTSUS"), as molded or carved articles of wax, and requested that all wickless wax objects be classified under subheading 3406.00.00, HTSUS, as candles, tapers, and the like.

On December 7, 2010, CBP denied the petition and affirmed its decision that wickless wax objects are classified under subheading 9602.00.40, HTSUS, as molded or carved articles of wax. Pursuant to 19 CFR 175.24, CBP is now providing notice of this decision and also providing notice of the receipt of petitioner's desire to contest this decision in court.

DATES: May 12, 2011.

FOR FURTHER INFORMATION CONTACT: Jean-Rene Broussard, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0284.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the tariff classification of imported wickless wax objects by CBP and the desire of a domestic interested party to contest CBP's classification decision.

Classification of Wickless Wax Objects

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order. The Explanatory Notes ("ENs") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The wickless wax objects that are the subject of the petition are petroleum based wax products that are in small molded shapes such as blocks, cylinders, columns, triangles, or bowls. The majority of these wickless wax objects are imported with a hole drilled into the center of them. These objects can be used as decorative items or for further production as candles.

CBP has issued numerous rulings on the classification of wickless wax objects. *See* New York Ruling Letters ("NY") L85725, dated June 30, 2005; NY L85383, dated June 15, 2005; NY L84761, dated June 2, 2005; NY G88343, dated March 26, 2001; NY G87878, dated March 7, 2001; NY G85945, dated January 16, 2001; NY F82375, dated February 11, 2000; NY F81245, dated January 11, 2000; NY E89220, dated November 8, 1999; NY E87727, dated September 27, 1999; NY E82227, dated May 18, 1999; NY E81505, dated May 12, 1999; and NY D88246, dated March 12, 1999. In all of these rulings CBP consistently held that wickless wax objects were classified under heading 9602, HTSUS, as molded or carved articles of wax.

Filing of Domestic Interested Party Petition

On February 18, 2009, the National Candle Association, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), filed a domestic interested party petition requesting that CBP reclassify imported wickless wax objects under subheading 3406.00.00, HTSUS, which provides for candles, tapers, and the like. The 2011 column one, general rate of duty, under this provision is duty free. Subheading 9602.00.40 provides for molded or carved articles of wax. The 2011 column one, general rate of duty, for this provision is 1.8 percent *ad valorem.*

On January 5, 2010, in accordance with 19 CFR 175.21, CBP published a Notice of Receipt of a Domestic Interested Party Petition filed by petitioner in the **Federal Register** (75 FR 420). The notice invited written

comments on the petition from interested parties. The comment period closed on March 8, 2010. Six comments were timely received in response to this notice and were all in support of the petitioner's position that the merchandise should be classified under heading 3406, HTSUS, as candles.

Decision on Petition and Notice of Petitioner's Desire To Contest

On December 7, 2010, CBP issued HQ H105015 which denied the domestic interested party petition and affirmed the tariff classification determination of the imported wickless wax objects as set forth in CBP's previously issued rulings. (A copy of this ruling and the comments submitted by the public can be found at *http://www.regulations.gov* under Docket No. USCBP–2009–0036). Ruling HQ H105015 officially notified the petitioner that "CBP correctly classified the wax objects described in L85725, dated June 30, 2005; NY L85383, dated June 15, 2005; NY L84761, dated June 2, 2005; NY G88343, dated March 26, 2001; NY G87878, dated March 7, 2001; NY G85945, dated January 16, 2001; NY F82375, dated February 11, 2000; NY F81245, dated January 11, 2000; NY E89220, dated November 8, 1999; NY E87727, dated September 27, 1999; NY E82227, dated May 18, 1999; NY E81505, dated May 12, 1999; and NY D88246, dated March 12, 1999, in heading 9602.00.40, HTSUS, as molded or carved articles of wax by application of GRIs 6 and 1." In that ruling, CBP also notified the petitioner of its right to file notice of its desire to contest the decision not later than thirty days from the date of issuance of this letter in accordance with section 175.23 of the CBP regulations (19 CFR 175.23).

On January 5, 2011, the National Candle Association timely provided CBP with notice of its desire to contest HQ H105015 in the United States Court of International Trade. The petitioner has identified, in accordance with 19 U.S.C. 1516(c) and 19 CFR 175.23, five ports of entry where it intends to challenge CBP's classification of wickless wax objects identified in entry documentation as "wax cylinders", "wax pillars", "wax blocks", "wax forms", "candle jars", "candle holders", "religious candles holders", or "religious candle jars" classified in heading 9602, HTSUS. The ports of entry are as follows: Los Angeles/Long Beach, California; New York, New York; Savannah, Georgia; Laredo, Texas; and Chicago, Illinois.

Upon application by the petitioner to any of the Port Directors of the ports listed above, the Port Director(s) must make available to the petitioner information on merchandise entered that meets the description in this notice so that the petitioner may determine whether the entry presented frames the issue that it wishes to present to the court. *See* 19 CFR 175.25(a) and (c). By this notice, Port Directors at these ports are directed to notify petitioner by mail when the first of such entries is liquidated so that the petitioner may file a summons in the Court of International Trade to challenge CBP's classification of the contested merchandise. *See* 19 U.S.C. 1516(c); 19 CFR 175.25(b).

As required by both the applicable statute and regulations, CBP is in receipt of the National Candle Association's letter, dated January 5, 2011, establishing the timely notice of its desire to contest in the Court of International Trade CBP's decision letter of HQ H105015 which held that the classification of imported wickless wax objects is under subheading 9602.00.40, HTSUS, as molded or carved articles of wax.

Authority: This notice is published in accordance with 19 U.S.C. 1516 and sections 175.23 and 175.24 of the CBP regulations (19 CFR 175.23–24).

Dated: May 6, 2011.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–11608 Filed 5–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Tuna—Tariff-Rate Quota; The Tariff-Rate Quota for Calendar Year 2011 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2011.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2011.

DATES: *Effective Dates:* The 2011 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile/Apparel Policy and Programs Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229, (202) 863–6560.

Background

It has been determined that 18,148,537 kilograms of tuna in air-tight containers may be entered and withdrawn from warehouse for consumption during the Calendar Year 2011, at the rate of 6 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30, HTSUS.

Dated: May 9, 2011.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–11687 Filed 5–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–12]

Notice of Proposed Information Collection for Public Comment: Tribal Colleges and University Programs

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date July 11, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed

extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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: Tribal College and Universities Program.

OMB Control Number: 2528–0215.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF_424, SF_424_SUPP, HUD_424_CB, SF_LLL, HUD_2880, HUD_2990, HUD_2993, HUD_40077, HUD_96010, HUD_96011.

Members of the Affected Public: Tribal Colleges and Universities (TCU) that meet the definition of a TCU established in Title III of the 1998 Amendments to Higher Education Act of 1965 (Pub. L. 105–244, approved October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	40	800
Semi-Annual Reports	10	20	6	120
Final Reports	10	10	8	80
Recordkeeping	10	10	5	50
Total			59	1050

Status of the proposed information collection: Pending OMB approval.

Authority: Pub. L. 105–244.

Dated: May 5, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development.

[FR Doc. 2011–11702 Filed 5–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–26C]

Notice of Technical Correction to the Notice of Funding Availability (NOFA) for the Department of Housing and Urban Development's (HUD) Fiscal Year (FY) 2010 Fair Housing Initiatives Program (FHIP) Enforcement Testing Technical Assistance (TA) Program

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Technical Correction to the Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2010 Fair Housing Initiatives Program (FHIP) Enforcement Testing Technical Assistance (TA) Program.

SUMMARY: On April 14, 2011, HUD posted the Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2010 Fair Housing Initiatives Program (FHIP) Enforcement Testing Technical Assistance (TA) Program to Grants.gov. The NOFA announced the availability of information on applicant eligibility, submission deadlines, funding criteria, and other program and application requirements.

The purpose of the program is to provide technical assistance to one or more entities to develop a course on Fair Housing Testing, and to conduct technical assistance to promote a greater and more consistent use of Testing Methodologies among FHIP organizations. Testing represents the most effective investigative tool in uncovering and corroborating claims of unlawful discrimination. Improving the quality and consistency of testing used by FHIP organizations will increase the persuasiveness and acceptance of tests in litigation. This is designed to provide FHIP organizations with the necessary tools to conduct, understand, and analyze testing with the stated goal of contributing to the Department's enforcement efforts.

The notice providing information regarding the application process, funding criteria and eligibility requirements, application and instructions can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.* The link from the funds available page will take you to the agency link on Grants.gov.

The Catalogue of Federal Domestic Assistance (CFDA) number for the Lead Hazard Reduction Demonstration program is 14.900. The Catalogue of Federal Domestic Assistance (CFDA) number for the Lead Hazard Reduction Demonstration program is 14.905. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2011 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: May 6, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–11671 Filed 5–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N094;96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
058670, 068239, 068240, 13186A, 13187A, and 13188A.	Hawthorn Corporation	75 FR 63196; October 14, 2010	March 31, 2011.
21862A	Chicago Zoological Society dba Brookfield Zoo.	76 FR 12990; March 9, 2011	April 21, 2011.
24269A	Chelonian Research Institute	75 FR 62139; October 7, 2010	March 31, 2011.
33990A	Allan Smith	76 FR 7580; February 10, 2011	March 25, 2011.
35237A	Harold Rank	76 FR 10623; February 25, 2011	March 28, 2011.
34141A	Nicholas Andreola	76 FR 10623; February 25, 2011	March 31, 2011.
35221A	Jeffrey L. Bearden	76 FR 10623; February 25, 2011	March 31, 2011.
30984A	U.S. Food and Drug Administration, Center fir Food Safety and Applied Nutrition.	76 FR 2408; January 13, 2011	April 6, 2011.
35246A	James McArtor	76 FR 12990; March 9, 2011	April 14, 2011.
Marine Mammals			
690038	U.S. Geological Survey, Alaska Science Center.	76 FR 7580; February 10, 2011	April 20, 2011.
19806A	Thomas Postel	75 FR 78731; December 16, 2010	May 6, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Dated: May 6, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–11706 Filed 5–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N095; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before June 13, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by June 13, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for

which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES.** The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: San Diego Zoological Society, San Diego, CA; PRT–15744A

The applicant requests a permit to export one captive-born aye-aye (*Daubentonia madagascariensis*) to Ueno Zoological Gardens, Tokyo, Japan for the purpose of scientific research.

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–41116A

The applicant requests a permit to import 2 captive bred female snow leopards (*Uncia uncia*) from the Granby Zoo, Granby, Quebec, Canada for the purpose of enhancement of the survival of the species.

Applicant: Scott Ackleson, Las Cruces, NM; PRT–38879A

The applicant requests a permit to import a 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.

Dated: May 6, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–11709 Filed 5–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L19100000–BJ0000–LRCME0R04764]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on June 13, 2011.

DATES: Protests of the survey must be filed before June 13, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Cadastral Surveyor,Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5134 or (406) 896–5009. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or tribal interest lands.

Principal Meridian, Montana

T. 27 N., R. 51 E.

The plat, in two sheets, representing the corrective dependent resurvey of the west half of the line between sections 8 and 17, the line between sections 7 and 18, the south half of the line between sections 7 and 8, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 18, the meanders of the 2002–2005 left bank of the Missouri River, downstream, through section 18, the limits of erosion, downstream, through section 18, and a certain division of accretion line in section 18, the dependent resurvey of a portion of the subdivision of section 8, the subdivision of section 8, and the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through section 8, Township 27 North, Range 51 East, Principal Meridian, Montana, was accepted April 1, 2011.

We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–11682 Filed 5–11–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held June 1, 2011, beginning at 9 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the Bureau of Land Management Butte Field Office (106 North Parkmont) in Butte, Montana.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon several topics, including reports from the Bureau of Land Management's Butte, Missoula and Dillon field offices.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATON CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2011–11685 Filed 5–11–11; 8:45 am]

BILLING CODE 4310–DN–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 Wireless Communication Devices and Systems, Components Thereof, and Products Containing Same,* DN 2802; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting 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 Linex Technologies, Inc. on May 6, 2011. 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 wireless communication devices and systems, components thereof, and products containing same. The complaint names as respondents Hewlett-Packard Company of Palo Alto, CA; Apple Inc. of Cupertino, CA; Aruba Networks, Inc. of Sunnyvale, CA; Meru Networks of Sunnyvale, CA and Ruckus Wireless of Sunnyvale, CA.

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. 2802") 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)).

Issued: May 9, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11632 Filed 5–11–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–358: (Third Review)]

Granular Polytetrafluoroethylene Resin From Italy; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin From Italy

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on granular polytetrafluoroethylene resin from Italy would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Stefania Pozzi Porter (202–205–3177; *Stefania.PozziPorter@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On May 2, 2011, the Commission determined that the domestic interested party group response to its notice of institution (75 FR 67105, November 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 1, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 6, 2011, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 6, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).[3]

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 9, 2011.

By order of the Commission.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11647 Filed 5–11–11; 8:45 am]

BILLING CODE P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by IDENTIFY to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

[3] See revised schedule, 76 FR 4936, January 27, 2011.

INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731–TA–1084–1087 (Review)

Purified Carboxymethylcellulose From Finland, Mexico, Netherlands and Sweden

Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on purified carboxymethylcellulose from Mexico and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on purified carboxymethylcellulose from Finland and Netherlands would be likely to lead

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on June 1, 2010 (75 FR 30431) and determined on September 7, 2010 that it would conduct full reviews (75 FR 57815, September 22, 2010). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 22, 2010 (75 FR 57815). The hearing was held in Washington, DC, on February 15, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 6, 2011. The views of the Commission are contained in USITC Publication 4225 (May 2011), entitled *Purified Carboxymethylcellulose from Finland, Mexico, Netherlands, and Sweden: Investigation Nos. 731–TA–1084–1087(Review).*

By order of the Commission.

Issued: May 9, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–11635 Filed 5–11–11; 8:45 am]

BILLING CODE 7020–02–P

[2] Commission Charlotte R. Lane determined that revocation of the antidumping duty order on subject imports from Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Commissioner Daniel R. Pearson determined that revocation of the antidumping duty orders on subject imports from Finland, Mexico, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter "NAC").

DATES: The meeting will take place on Thursday, June 2 and Friday, June 3, 2011.

ADDRESS: The meeting will take place at the Fairfax at Embassy Row Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008. The public is asked to pre-register by May 27, 2011 for the meeting due to security considerations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589. You may also view information about the NAC on the Office on Violence Against Women Web site at: *http://www.ovw.usdoj.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The National Advisory Committee on Violence Against Women (NAC) was re-chartered on March 3, 2010 by the Attorney General. The purpose of this federal advisory committee is to provide advice and recommendations to the Department of Justice and the Department of Health and Human Services on how to improve the Nation's response to violence against women, with a specific focus on successful interventions with children and teens who witness and/or are victimized by domestic violence, dating violence, and sexual assault. The NAC will bring together experts, advocates, researchers, and criminal justice professionals for the exchange of innovative ideas and the development of practical solutions to help the federal government address and prevent these serious problems. This federal advisory committee will develop recommendations for successful interventions with children and teens who witness and/or are victimized by domestic violence, dating violence, and sexual assault. The NAC members will also examine the relationship between children and teens who are witnesses to or victims of such violence and the overall public safety of communities across the country.

This is the second meeting of the NAC and will include presentations by Department of Justice staff on federal efforts to address these problems, facilitated discussions on the experiences of youth victims (with a panel from the National Crittenton Foundation), research on children and youth exposed to violence (with a presentation from Dr. David Wolfe), and stalking and technology (with presentations from the National Network to End Domestic Violence and the Stalking Resource Center) and a discussion of the goals for the NAC. The Director of the Office on Violence Against Women, the Honorable Susan B. Carbon, serves as the Designated Federal Official of the NAC. Lori Crowder will serve as a facilitator at this meeting.

The NAC is also welcoming public oral comment at this meeting and has reserved an estimated 30 minutes for this purpose. Time will be reserved for public comment on June 2 and 3, 2011. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space available basis and for security reasons is required. All members of the public who wish to attend must register in advance of the meeting by May 27, 2011 by contacting Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the start of the meeting.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Catherine Poston no later than May 27, 2011.

Written Comments: Interested parties are invited to submit written comments by May 27, 2011 to Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail:*Catherine.poston@usdoj.gov;* or fax: (202) 305–2589.

Public Comment: Persons interested in participating during the public comment periods of the meeting are requested to reserve time on the agenda by contacting Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589. Requests must include the participant's name, organization represented, if appropriate, and a brief

description of the subject of the comments. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments. Comments that are submitted to Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589 will be circulated to NAC members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the NAC, to the attention of Catherine Poston, Attorney Advisor, Office on Violence Against Women, United States Department of Justice, 145 N Street, NE., Suite 10W 121, Washington, DC 20530; by telephone at: (202) 514–5430; e-mail: *Catherine.poston@usdoj.gov;* or fax: (202) 305–2589.

Dated: May 4, 2011.

Susan B. Carbon,

Director, Office on Violence Against Women.

[FR Doc. 2011–11656 Filed 5–11–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Price Index Commodities and Services Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting a revision of the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Consumer Price Index Commodities and Services Survey," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. Each month, BLS data collectors called economic assistants visit or call thousands of retail stores, service establishments, rental units, and doctors' offices all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The collection of price data from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the CPI. The CPI is then widely used as a measure of inflation, indicator of the effectiveness of government economic policy, deflator for other economic series, and as a means of adjusting dollar values.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0039. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 12, 2011 (76 FR 2149).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of the publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Consumer Price Index Commodities and Services Survey.

OMB Control Number: 1220–0039.

Affected Public: Private sector—Businesses or other for-profits and not-for-profit institutions; and State, Local, and Tribal governments.

Total Estimated Number of Respondents: 75,270.

Total Estimated Number Responses: 502,958.

Total Estimates Annual Burden Hours: 179,918.

Total Estimated Annual Costs Burden: $0.

Dated: May 6, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–11676 Filed 5–11–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,700]

AT&T Services, Inc., Reynoldsburg, OH; Notice of Negative Determination on Reconsideration

On January 21, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of AT&T Services, Inc., Reynoldsburg, Ohio (subject firm). The Notice of determination was published in the **Federal Register** on February 2, 2011 (76 FR 5831). Workers supply customer care call services.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination was based on the findings that the worker separations are not attributable to increased imports of services by the subject firm or a shift in the supply of services by the subject firm to a foreign country. Rather, the investigation established that the worker separations are attributable to the subject firm shifting customer care call services to other facilities within the United States. The investigation also revealed the firm is not a supplier or downstream producer to a firm that employed a worker group eligible to apply for Trade Adjustment Assistance (TAA).

In the request for reconsideration, the petitioners alleged that the subject firm has shifted services to a foreign country.

During the reconsideration, the Department received information that shows that AT&T Services, Inc. (and not AT&T) is the appropriate name of the firm, and the heading has been changed to properly reflect the firm's name.

Information obtained during the reconsideration investigation confirmed that all of the workers who worked at the subject firm are referred to as "Legacy T workers" and "Customer Sales and Service Specialists (CSSS)"; that none of the services previously supplied by the subject firm (or like or directly competitive services) was outsourced to a foreign country; and that AT&T managers did not train any call center managers in India. Rather, work previously performed at the subject firm was consolidated into three other AT&T call centers within the United States.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of AT&T Services, Inc., Reynoldsburg, Ohio.

Signed in Washington, DC, on this 2nd day of May 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11637 Filed 5–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Negative Determination on Reconsideration

TA–W–70,949 Chrysler LLC
Mopar Parts Distribution Center Center Line, Michigan
TA–W–70,949A Chrysler LLC
Mopar Parts Distribution Center Naperville, Illinois
TA–W–70,949B Chrysler LLC
Mopar Parts Distribution Center New Boston, Michigan
TA–W–70,949C Chrysler LLC
Mopar Parts Distribution Center Beaverton, Oregon
TA–W–70,949D Chrysler LLC
Mopar Parts Distribution Center Carrollton, Texas
TA–W–70,949E Chrysler LLC
Mopar Parts Distribution Center Fontana, California
TA–W–70,949F Chrysler LLC
Mopar Parts Distribution Center Lathrop, California
TA–W–70,949G Chrysler LLC
Mopar Parts Distribution Center Denver, Colorado
TA–W–70,949H Chrysler LLC
Mopar Parts Distribution Center Ontario, California
TA–W–70,949I Chrysler LLC
Mopar Parts Distribution Center Hazelwood, Missouri
TA–W–70,949J Chrysler LLC
Mopar Parts Distribution Center Morrow, Georgia
TA–W–70,949K Chrysler LLC
Mopar Parts Distribution Center Memphis, Tennessee
TA–W–70,949L Chrysler LLC
Mopar Parts Distribution Center Tappan, New York
TA–W–70,949M Chrysler LLC
Mopar Parts Distribution Center Mansfield, Massachusetts
TA–W–70,949N Chrysler LLC
Mopar Parts Distribution Center Plymouth, Minnesota
TA–W–70,949O Chrysler LLC
Mopar Parts Distribution Center Streetsboro, Ohio
TA–W–70,949P Chrysler LLC
Mopar Parts Distribution Center Orlando, Florida
TA–W–70,949Q Chrysler LLC
Mopar Parts Distribution Center Milwaukee, Wisconsin
TA–W–70,949R Chrysler LLC
Mopar Parts Distribution Center Warren, Michigan
TA–W–70,949S Chrysler LLC
Mopar Parts Distribution Center Marysville, Michigan

On October 7, 2010, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject facilities. The workers are engaged in activities related to the supply of warehousing and distribution services related to automotive parts.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified

The negative determination was based on the findings that there was no increase in imports of services like or directly competitive with those supplied by the subject workers and no shift to/acquisition from a foreign country by the workers' firm in the supply of services like or directly competitive with those supplied by the subject workers.

The request for reconsideration asserts that the workers are eligible to apply for Trade Adjustment Assistance (TAA) as adversely-affected secondary workers because they "provide replacement and accessory parts for new vehicles" and identified firms that employed worker groups eligible to apply for TAA.

Section 222(d) of the Act, 19 U.S.C. 2272(d), defines the term "Supplier" as "a firm that produces and supplies directly to another firm component parts for articles, or services used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under subsection (a) [of Section 222 of the Act] of a group of workers employed by such other firm."

Section 222(d) of the Act, 19 U.S.C. 2272(d), defines the term "Downstream Producer" as "a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a) [of Section 222 of the Act]" and defines the term "value-added production processes or services" to "include final assembly, finishing, testing, packaging, or maintenance or transportation services."

During the reconsideration investigation, the Department received information that confirmed that the subject facilities are not a "supplier" or a "downstream producer" within the meaning of the Trade Act of 1974, as amended.

The subject facilities do not produce and directly supply component parts (or services) to a firm that both employed a worker group eligible to apply for TAA and directly used the component parts (or services) in the production of the article or in the supply of the service that was the basis for the TAA certification, and do not perform downstream producer services for a firm that both employed a worker group eligible to apply for TAA and directly used the service in the production of the article or in the supply of the service that was the basis for the TAA certification.

Rather, the subject facilities separate, consolidate and package finished parts that are produced by others, and ship the packages to Chrysler points of contacts, who then forward the packages to car dealerships who ordered the parts on behalf of the dealership's customers.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Chrysler LLC, Mopar Parts Distribution Center in Center Line, Michigan (TA–W–70,949); Naperville, Illinois (TA–W–70,949A); New Boston, Michigan (TA–W–70,949B); Beaverton, Oregon (TA–W–70,949C0; Carrollton, Texas (TA–W–70,949D); Fontana, California (TA–W–70,949E); Lathrop, California (TA–W–70,949F); Denver, Colorado (TA–W–70,949G); Ontario, California ((TA–W–70,949H); Hazelwood, Missouri (TA–W–70,949I); Morrow, Georgia (TA–W–70,949J); Memphis, Tennessee (TA–W–70,949K); Tappan, New York (TA–W–70,949L); Mansfield, Massachusetts (TA–W–70,949M); Plymouth, Minnesota (TA–W–70,949N); Streetsboro, Ohio (TA–W–70,949O); Orlando, Florida (TA–W–70,949P); Milwaukee, Wisconsin (TA–W–70,949Q); Warren, Michigan (TA–W–70,949R); and Marysville, Michigan (TA–W–70,949S).

Signed in Washington, DC, on this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11638 Filed 5–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,479A]

Enesco, LLC, Itasco, IL; Notice of Negative Determination on Reconsideration

On October 18, 2010, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Enesco, LLC, Gund Division, Distribution Center, Edison, New Jersey (Enesco-Edison). The Department's Notice was published in the **Federal Register** on October 29, 2010 (75 FR 66795). The workers supplied packaging and distribution services related to giftware.

The initial investigation was initiated in response to a petition filed on February 17, 2010 by a State of Illinois Workforce Office on behalf of workers of Enesco, LLC, Itasca, Illinois. The petition alleges that "Enesco LLC production of giftware products is currently in China; the company has transferred Quality/Regulatory Compliance Department overseas as well in order to keep production and quality assurance testing in one location."

Because the petitioner did not provide additional information regarding the worker group, the Department relied on publicly-available materials and the company official identified on the petition for information.

Although the company's headquarters are in Itasca, Illinois, the company official provided information that revealed that the separated workers worked in the distribution center that was part of the Gund Division in Edison, New Jersey (TA–W–73,479). Based on this information, the Department determined that the subject worker group was not Enesco LLC, Itasca, Illinois but Enesco-Edison.

In the request for reconsideration, the State Workforce Office stated that a worker who was in the "Regulatory Compliance/Quality Assurance Department of Enseco, LLC, located in Itasca, Illinois" had "spent over 6 hours on the conference call with China, training someone to perform her duties." The State Workforce Office further alleges that "all of the Regulatory Compliance/Quality Assurance Department of Enseco LLC was transferred to Hong Kong." In support of the allegations, the State Workforce Office provided a document titled "Letter to supplier regarding QA & QC" that states "We have expanded our team both in China as well as in our Hong Kong office" (dated March 6, 2009).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial negative determination was based on the findings that Enesco-Edison did not shift to/acquire from a foreign country the supply of services like or directly competitive with the services supplied by the workers; that the workers' separation, or threat of separation, was not related to an increase in imports of like or directly competitive services; and that the workers are not adversely affected secondary workers.

During the reconsideration investigation, the Department contacted Enesco, LLC and obtained information regarding Enesco, LLC, Itasca, Illinois (Enesco-Itasca) and the worker on whose behalf the petition and request for reconsideration were filed.

New information provided by the subject firm revealed that there is no Regulatory Compliance/Quality Assurance Department; that workers at Enesco-Itasca are separately identifiable by division and separately identifiable within each division by service supplied; and that the worker on whose behalf the petition and the request for reconsideration were filed worked in the logistics division of Enesco-Itasca and supplied quality control services related to the production of toys. Further, Enesco-Itasca does not produce toys; rather, Enesco-Itasca supplies services related to the sales, marketing and development of toys.

Additional information obtained during the reconsideration investigation revealed that the group eligibility

requirements under Section 222(a) and (c) of the Act, 19 U.S.C. 2272(a) and (c), have not been met. 29 CFR 90.2 states that a significant number or proportion of the workers means at least three workers in a firm (or appropriate subdivision thereof) with a workforce of fewer than 50 workers, or five percent of the workers or 50 workers, whichever is less, in a workforce of 50 or more workers.

Although the Department was able to confirm separations at the Itasca, Illinois facility, the number or proportion of workers totally or partially separated, or threatened with such separation, at Enesco, LLC, Itasca, Illinois, does not meet the regulatory definition.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Enesco, LLC, Itasca, Illinois (TA–W–73,479A).

Signed in Washington, DC, on this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11640 Filed 5–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,971]

ASC Machine Tools, Inc., Spokane Valley, WA; Notice of Negative Determination on Reconsideration

On October 7, 2010, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of ASC Machine Tools, Inc., Spokane Valley, Washington (the subject firm). The Department's Notice was published in the **Federal Register** on October 25, 2010 (75 FR 65516). The workers produce custom-order metal cutting machinery used to form and cut metal, including assembled equipment, component parts of equipment, and spare parts. Workers are not separately identifiable by article produced.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the finding that the subject firm sales decline was due to loss of export sales of foreign customers' bids to competitors outside the United States. The initial investigation also revealed decreased aggregate imports of metal cutting equipment during the relevant period, and that the subject firm is not a supplier or downstream producer for any firm that employed a worker group eligible to apply for Trade Adjustment Assistance (TAA).

The International Association of Machinists and Aerospace Workers, District Lodge 751, in the request for reconsideration, alleges increased imports from Sen Fung Rollform Machinery Corporation in Taiwan and Metform International in Canada. The request for reconsideration also articulates the concern that "the affected workers are being penalized due to the inconsistent customer base of the company" and requests that aggregate import data during 2007 and 2008 be considered.

During the reconsideration investigation, the Department received information that confirmed that Sen Fung Rollform Machinery Corporation in Taiwan and Metform International in Canada are competitors of the subject firm and not customers, as inferred in the request for reconsideration. As such, the Department did not conduct a bid survey in regard to the aforementioned companies.

In regard to the request that aggregate import data be considered for 2007 and 2008, the Department can not consider data for this period because it is outside of the relevant period under investigation.

29 CFR 90.2 states that increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of ASC Machine Tools, Inc., Spokane Valley, Washington.

Signed in Washington, DC, on this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11639 Filed 5–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,549]

Algonac Cast Products, Inc., Algonac, MI; Notice of Revised Determination on Reconsideration

On November 10, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Algonac Cast Products, Inc., Algonac, Michigan (subject firm) to apply for Trade Adjustment Assistance (TAA). The Department's Notice was published in the **Federal Register** on November 23, 2010 (75 FR 7145). Workers are engaged in employment related to the production of marine hardware and are not separately identifiable by article produced.

During the reconsideration investigation, the Department received additional and new information from the subject firm, conducted an expanded customer survey, and analyzed import data of like or directly competitive articles.

Section 222(a)(1) has been met because a significant number or proportion of workers at the subject firm became totally or partially separated, or threatened with such separation.

Section 222(a)(2)(A)(i) has been met because subject firm sales and production decreased during 2009 from 2008 levels.

Section 222(a)(2)(A)(ii) has been met because there were increased imports of articles like or directly competitive with marine hardware produced by the subject firm.

Finally, Section 222(a)(2)(A)(iii) has been met because the increased imports contributed importantly to the worker group separations and sales/production declines at Algonac Cast Products, Inc., Algonac, Michigan.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers and former workers of Algonac Cast Products, Inc.,

Algonac, Michigan, who are engaged in employment related to the production of marine hardware, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Algonac Cast Products, Inc., Algonac, Michigan, who became totally or partially separated from employment on or after August 18, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11644 Filed 5–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,029]

Automotive Components Holdings, LLC, a Subsidiary of Ford Motor Company, Saline Plant Division, Including Workers Whose Wages Were Reported Under Ford Company, Visteon, MSX International, W.J. O'Neil Company, and Unibar, Saline, MI; Notice of Revised Determination on Reconsideration

On October 7, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Automotive Components Holdings, LLC, a Subsidiary of Ford Motor Company, Saline Plant Division, Saline, Michigan (subject firm) to apply for Trade Adjustment Assistance (TAA). The Department's Notice was published in the **Federal Register** on October 25, 2010 (75 FR 65514). The workers are engaged in employment related to the production of interior automotive component parts. The worker group includes workers whose wages were reported under Ford Company, Visteon, MSX International, W.J. O'Neil Company, and Unibar.

New information provided by subject firm officials, the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), Local 1124, and the State of Michigan workforce officials, revealed that workers and former workers of the subject firm, including workers whose wages were reported under Ford Company, Visteon, MSX International, W.J. O'Neil Company, and Unibar, meet the certification criteria.

During the reconsideration investigation, the Department received additional information regarding the subject firm's staffing arrangements with Ford Company and Visteon and how the Saline, Michigan facility operated in conjunction with affiliated production facilities, including those that have employed worker groups eligible to apply for TAA.

Criterion I has been met because a significant number or proportion of workers at the subject firm were totally separated.

Criterion II has been met because sales and production of interior automotive component parts at the subject firm decreased absolutely during the relevant period.

Criterion III has been met because imports of articles like or directly competitive with the interior automotive component parts produced by Automotive Components Holdings, LLC, a Subsidiary of Ford Motor Company, Saline Plant Division, Saline, Michigan, increased during the relevant period and contributed importantly to worker separations at the Saline, Michigan facility.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers and former workers of Automotive Components Holdings, LLC, a Subsidiary of Ford Motor Company, Saline Plant Division, Saline, Michigan, who are engaged in employment related to the production of interior automotive component parts, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a).

In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Automotive Components Holdings, LLC, a Subsidiary of Ford Motor Company, Saline Plant Division, including workers whose wages were reported under Ford Company, Visteon, MSX International, W.J. O'Neil Company, and Unibar, Saline, Michigan, who became totally or partially separated from employment on or after August 13, 2008, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11642 Filed 5–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,897]

Penske Logistics LLC, a Subsidiary of General Electric/Penske Corporation Including On-Site Leased Workers From Kelly Temporary Services and Manpower El Paso, TX; Notice of Termination of Investigation

On March 18, 2011, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Penske Logistics LLC, a subsidiary of General Electric/Penske Corporation, El Paso, Texas (subject firm). The Department's Notice was published in the **Federal Register** on March 29, 2011 (76 FR 17447). The workers are engaged in employment related to the supply of customer service functions.

The negative determination was based on the findings that the subject firm did not shift to/acquire from a foreign country services like or directly competitive with the customer services supplied; that the workers' separation, or threat of separation, was not due to an increase in imports of like or directly competitive services; and that the workers were not eligible to apply for Trade Adjustment Assistance (TAA) as adversely-affected secondary workers.

On January 31, 2011, the three workers who filed the request for reconsideration filed a petition for TAA on behalf of the same worker group (TA–W–75,158). A certification applicable to the worker group covered by TA–W–75,158 (including on-site leased workers of Kelly Temporary Services and Manpower) was issued on February 23, 2011. The Department's Notice of Determination (TA–W–75,158) was published in the **Federal Register** on March 10, 2011 (76 FR 13233).

Further investigation on administrative reconsideration would serve no purpose; therefore, the immediate investigation is terminated.

Signed at Washington, DC, this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11641 Filed 5–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,376]

Wacker Neuson Corporation, a Subsidiary of Wacker Neuson SE. Menomonee Falls, WI; Notice of Termination of Investigation

By application dated August 17, 2010, a company official requested administrative reconsideration of the affirmative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The certification of eligibility was issued on July 30, 2010. The Department's Notice of determination was published in the **Federal Register** on August 13, 2010 (75 FR 49530). The workers produce construction equipment and are not separately identifiable by product line.

The initial investigation resulted in an affirmative determination based on the findings that a significant proportion or number of the workers at the subject firm were totally or partially separated, or threatened with such separation, that the subject firm shifted to a foreign country the production of articles like or directly competitive with those produced by the workers, and that the shift in production contributed importantly to worker group separations at the subject firm.

On August 18, 2010, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on August 30, 2010 (75 FR 52980).

In the request for reconsideration, the company official requested that the Department rescind the affirmative determination regarding worker eligibility to apply for TAA. The company official stated that the shift in production abroad did not contribute importantly to worker separations because the production of the article that shifted employed a negligible number of workers and, when production shifted abroad, those workers were reassigned to other product lines.

Under 29 CFR 90.18(a), "Any worker, group of workers, certified or recognized union, or authorized representative of such worker group, aggrieved by a determination issued pursuant to the Act * * * may file an application for reconsideration of the determination * * *."

Upon further review of the request for reconsideration, the Department determines that an employer's request for reconsideration of an affirmative determination is not in the best interest of the worker group and, therefore, the Department cannot infer that the employer is acting as an "authorized representative" of the worker group.

Further investigation on administrative reconsideration would serve no purpose; therefore, the investigation is terminated.

Signed at Washington, DC, this 2nd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–11643 Filed 5–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Extension of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Non-construction Supply and Service Information Collection. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 11, 2011.

ADDRESSES: You may submit comments, identified by Control Number 1250–0003, by either one of the following methods:

Electronic comments: through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the regulations.gov Web site or to submit them by mail early. Comments, including any personal information provided, become a matter of public record and will be posted to the regulations.gov Web site. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0103 (not a toll-free number). TTY/TDD callers may call (202) 693–1337 (not a toll-free number) to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contractor Compliance Programs (OFCCP) administers three nondiscrimination and equal employment opportunity laws. These authorities prohibit employment

discrimination but also require affirmative action to ensure that equal employment opportunities are available regardless of race, sex, color, national origin, religion, or status as a qualified individual with a disability or protected veteran by Federal contractors.

• Executive Order 11246, as amended (EO 11246);

• Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and

• The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

For purposes of this clearance, OFCCP is dividing its responsibilities under these authorities into categories: (1) Construction and (2) non-construction (supply and service). This clearance request covers the EO 11246 non-construction supply and service aspects of our program. To view the current supply and service Information Collection, go to *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200804-1215-003.* A separate Information Collection Request (ICR), approved by the Office of Management and Budget (OMB) under OMB No. 1250–0001 (formerly 1215–0163), covers the construction aspects of these programs.

E.O. 11246 prohibits Federal contractors from discriminating against applicants and employees on the basis of race, color, religion, sex, or national origin. The E.O. 11246 applies to Federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract of $10,000 or more, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. The E.O. 11246 also applies to government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

The ICR discussed below will address EO 11246, non-construction Supply and Service program, that is subject to the Paperwork Reduction Act of 1995 (PRA).

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks the approval of the revision of this information in order to carry out its responsibility to enforce the anti-discrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Revision.

Agency: Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements, Supply and Service.

OMB Number: 1250–0003.

Agency Number: None.

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents: 108,288.

Total Annual responses: 108,288.

Average Time per Response (approximation due to rounding): 103.19 hours.

Estimated Total Burden Hours (approximation due to rounding): 11,174,641.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $135,272.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 4, 2011.

Debra A. Carr,

Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2011–11570 Filed 5–11–11; 8:45 am]

BILLING CODE P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held via telephone conference call from the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of advising the agency, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, on the development of humanities programming and content for an upcoming *Bridging Cultures Bookshelf* project on the subject of Muslim history and cultures, including discussion of the early planning stages of the project and strategies for shaping and implementing the program. Because the proposed meeting will consider information that is likely to disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that the meeting will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

1. *Date:* May 24, 2011.

Time: 11 a.m. to 4 p.m.

Place: National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (Telephone Conference Call).

Program: This meeting will provide advice about the Bridging Cultures Bookshelf project on the subject of Muslim history and cultures.

Michael P. McDonald,

Management Officer, Advisory Committee.

[FR Doc. 2011–11597 Filed 5–11–11; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange

Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–13; SEC File No. 270–27; OMB Control No. 3235–0035.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of the extension of the previously approved collection of information on the following rule: Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–13(b) (17 CFR 17a–13(b)) generally requires that, at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held, and that they account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) (17 CFR 240.17a–13(c)) provides that under specified conditions, the securities counts, examination, and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X–17a–5 (17 CFR 248.617), which must be filed with the Commission under Rule 17a–5 (17 CFR 17a–5). Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. The Rule also does not apply to certain broker-dealers required to register only because they effect transactions in securities futures products.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations ("SROs") to those firms having problems in their back offices.

Currently, there are approximately 5,030 broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with the Rule. As noted, the Rule requires a broker-dealer to account for all securities in its possession. Many broker-dealers hold few, if any, securities; while others hold large quantities. Therefore, the time burden of complying with the Rule will depend on respondent-specific factors, including size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent is 100 hours per year on an ongoing basis to maintain the records required under the Rule. This estimate takes into account the fact that more than half the 5,030 respondents—according to financial reports filed with the Commission—may spend little or no time in complying with the Rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 503,000 hours (5,030 respondents × 100 hours/respondent).

The records required to be made by Rule 17a–13 are available only to Commission examination staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: May 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11626 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–2; SEC File No. 270–189; OMB Control No. 3235–0201.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17a–2 (17 CFR 240.17a–2).

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities conducted in accordance with Rule 104. The collections of information under Regulation M and Rule 17a–2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) (17 CFR 242.104(i)) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential. The recordkeeping requirement of Rule 17a–2 requires the information be

maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a–4(f) (17 CFR 240.17a–4(f)).

There are approximately 745 respondents per year that require an aggregate total of 3,725 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 5 hours to complete. Thus, the total compliance burden per year is 3,725 burden hours. The total compliance cost for the respondents is approximately $212,213.25, resulting in a cost of compliance for the respondent per response of approximately $284.85 (*i.e.,* $212,213.25/745 responses).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

May 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11625 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 19b–7 and Form 19b–7; OMB Control No. 3235–0553; SEC File No. 270–495.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in Rule 19b–7 (17 CFR 240.19b–7) and Form 19b–7—Filings with respect to proposed rule changes submitted pursuant to Section 19b(7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

The Exchange Act provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or "SROs"), have primary responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight: The Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 ("CFMA"). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, "security futures products"). The CFMA removed this restriction and provides that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission ("CFTC").

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.[1] Rule 19b–7 and Form 19b–7 implemented this procedure. Effective April 28, 2008, the SEC amended Rule 19b–7 and Form 19b–7 to require that Form 19b–7 be submitted electronically.[2]

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in affect or abrogated.

The respondents to the collection of information are SROs. Five respondents file an average total of 12 responses per year. Each response takes approximately 13.25 hours to complete, which corresponds to an estimated annual response burden of 159 (12 responses × 13.25 hours) hours.[3]

Compliance with Rule 19b–7 is mandatory. Information received in response to Rule 19b–7 shall not be kept confidential; the information collected is public information.

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.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

[1] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

[2] *See* Securities Exchange Act Release No. 57526 (March 19, 2008), 73 FR 16179 (March 27, 2008).

[3] The average cost per response is $4,465.50 (13.25 hours multiplied by a weighted average hourly rate of $337.02). The resultant total related cost of compliance for these respondents is $53,586 per year (12 responses × $4,465.50 per response).

May 8, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11627 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29665; 812–13772]

PennantPark Investment Corporation, et al.; Notice of Application

May 6, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a) and 61(a) of the Act.

APPLICANTS: PennantPark Investment Corporation (the "Company"), PennantPark SBIC GP, LLC (the "General Partner"), PennantPark SBIC LP ("PennantPark SBIC") and PennantPark Investment Advisers, LLC (the "Investment Adviser")

SUMMARY OF THE APPLICATION: The Company requests an order to permit it to adhere to a modified asset coverage requirement.

DATES: *Filing Dates:* The application was filed on May 12, 2010 and amended on September 7, 2010, February 18, 2011, and May 2, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 31, 2011 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 590 Madison Avenue, 15th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Dalia Osman Blass, Branch Chief, at (202) 551–6874 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] The Company's investment objectives are to generate both current income and capital appreciation in the form of mezzanine debt, senior secured loans and equity investments through debt and equity investments primarily in U.S. middle market private companies. The Investment Adviser, a Delaware limited liability company, is the external investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. PennantPark SBIC, a Delaware limited liability company, is a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") to operate under the Small Investment Act of 1958 ("SBIA"). PennantPark SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of PennantPark SBIC in the form of limited partnership interests. The General Partner, which is a wholly-owned subsidiary of the Company, owns 1% of PennantPark SBIC in the form of a general partnership interest. The Company is the sole member of the General Partner.

Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exemption from the definition of "investment company" under the 1940 Act (each, a "SBIC Subsidiary").[2] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by PennantPark SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by PennantPark SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit PennantPark SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, PennantPark SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, PennantPark SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of PennantPark SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11622 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64420; File No. SR–NYSE–2011–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 80C To Include Additional Securities in the Pilot by Which Such Rule Operates and Amending Rule 104 To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 80C

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 prepared by NYSE. 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 Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C.

The Commission approved Rule 80C on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its filing to adopt Rule 80C that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 80C would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000").[4]

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). The Exchange submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. *See* Securities Exchange Act Release No. 62284 (June 11, 2010), 75 FR 34498 (June 17, 2010) (SR–NYSE–2010–45).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and a specified list of Exchange Traded Products ("ETPs"), where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63500 (December 9, 2010), 75 FR 78309 (December 15, 2010) (SR–NYSE–2010–81). The Pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up/

Continued

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 80C need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider Threshold Move percentage to the newly added securities. Accordingly, the Exchange proposes to delete Supplementary Material .10 to Rule 80C, as the text therein would no longer be necessary.

The Exchange proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[5] The Exchange believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500, Russell 1000, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. In addition, the Exchange believes that a 50% threshold move is appropriate for securities trading under a dollar to reflect that price movements of such lower-priced stocks equate to a higher percentage move than a similar price change would be for a higher-priced stock.

The Exchange proposes to include new subsections 80C(a)(i), (ii) and (iii) to reflect the distinction between the applicable Threshold Move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.[6] The Exchange is not proposing any other changes to the text of Rule 80C or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 104(a)(1)(B)(iii) and (iv), which pertains to the pricing obligations that Designated Market Makers ("DMMs") are required to adhere to, be amended to correct the cross-references therein to Rule 80C and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from Rule 104(a)(1)(B)(iii) and (iv) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 104(a)(1)(B)(iii) and (iv) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 80C is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 104(a)(1)(B)(iii) and (iv) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on DMM pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64254 (April 7, 2011), 76 FR 20767 (April 13, 2011) (SR–NYSE–2011–16).

[5] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

[6] The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the Threshold Move for the existing Pilot securities be reorganized within Rule 80C.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–21 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–21. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–21 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11611 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64423; File No. SR–ISE–2011–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change by International Securities Exchange to Amend ISE Rule 2102

May 6, 2011.

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 May 5, 2011, 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 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 Rule 2102 (Hours of Business) to expand the applicability of Trading Pauses to cover all NMS Stocks.

The text of the proposed rule change is available on the Exchange's Internet Web site at *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 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 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 2102 to expand the applicability of Trading Pauses to cover all NMS Stocks.[3] Initial amendments to ISE Rule 2102 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause were approved by the Commission on June 10, 2010 on a pilot basis.[4] The Exchange noted in its filing to adopt the initial amendments to Rule 2102 that during the pilot period it would continue to assess whether additional securities need to be added and whether the parameters of the trading pause would need to be modified to accommodate trading characteristics of different securities. On September 10, 2010, ISE Rule 2102 was amended again to expand the pilot rule to apply to the Russell 1000® Index and other specified exchange traded products.[5]

The Exchange has continued to assess whether additional securities need to be added to the pilot and whether the parameters of Rule 2102 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange now proposes to include all NMS Stocks within the pilot that are not already included therein and to apply a wider Threshold Move percentage to the newly added securities. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. The Exchange proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* ISE Rule 2100(c)(13).

[4] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–ISE–2010–48) (Approving the pilot with an expiration date of December 10, 2010); 63506 (December 9, 2010), 75 FR 78301 (December 15, 2010) (SR–ISE–2010–117) (Extending the date by which the pilot rule will expire to April 11, 2011); 64193 (April 5, 2011), 76 FR 20062 (April 11, 2011) (SR–ISE–2011–17) (Extending the date by which the pilot rule will expire to the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–ISE–2010–66).

for such securities priced less than $1.[6] The Exchange believes that this threshold differentiation is appropriate because lower priced securities tend to be more volatile, which amounts to a higher percentage move than a similar price change in a higher-priced stock. The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current pilot.

Accordingly, with respect to expanding the applicability of Trading Pauses to include all NMS Stocks, the Exchange is proposing to amend Section (f)(4) of ISE Rule 2102 to reflect this change. With respect to widening the Threshold Move percentage for the newly added securities, the Exchange is not proposing a change to its rule text because the ISE is not a primary listing market for equity securities and is therefore not responsible for calculating the Threshold Moves to trigger a Trading Pause. The current rule text provides that the Exchange shall immediately institute a Trading Pause anytime an exchange-listed security moves by 10% or more within a five-minute period, as calculated by the primary listing market, therefore the widening of the Threshold Move percentages need not be reflected in the ISE's rule text as the newly proposed process conforms with the current rule text.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[7] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

[6] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidate Tape on the previous trading day.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–28. 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 publicly available. All submissions should refer to File Number SR–ISE–2011–28 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11613 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64426; File No. SR–NASDAQ–2011–067]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4120(a)(11) To Include Additional Securities in the Pilot by Which Such Rule Operates and Amend Rule 4613(a) To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 4120(a)(11)

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, The NASDAQ Stock Market LLC ("Exchange"), filed with the Securities

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 NASDAQ Rule 4120(a)(11) to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 4120(a)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4120(a)(11) to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 4120(a)(11).

The Commission approved Rule 4120(a)(11) on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its filing to adopt Rule 4120(a)(11) that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 4120(a)(11) would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 4120(a)(11) need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider price move percentage to the newly added securities. Accordingly, the Exchange proposes to delete language concerning the limited application of Rule 4120(a)(11) from the rule's text, as the text therein would no longer be necessary. The Exchange proposes that the price move required to trigger a trading pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[5] The Exchange believes that applying a broader percentage to securities priced less than $1 compared to those priced above $1 is appropriate given that lower-priced securities tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced stock. The Exchange also believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader price move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader price move percentage would also be appropriate for leveraged ETPs. The Exchange proposes to include new subsections 4120(a)(11)(A), (B) and (C) to reflect the distinction between the applicable price move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.[6] The Exchange is not proposing any other changes to the text of Rule 4120(a)(11) or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 4613(a), which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to correct the cross-references therein to Rule 4120(a)(11) and the price move thereunder. Specifically, the Exchange proposes to remove any text from Rule 4613(a) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 4613(a) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 4120(a)(11) is not in effect. The Exchange notes that part of this proposed change would be

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162). On March 31, 2011, the Exchange submitted a proposed rule change to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

[5] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

[6] The Exchange is not proposing a change to the price move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the price move for the existing Pilot securities be reorganized within Rule 4120(a)(11).

substantive, in that the percentages under Rule 4613(a) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–067. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2011–067 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11615 Filed 5–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64433; File No. SR–BYX–2011–011]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Extend a Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

May 6, 2011.

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 May 4, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility," to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled "Obligations of Market Makers," to conform certain of the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

percentages thereunder consistent with the proposed changes to the pilot.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility," to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled "Obligations of Market Makers," to conform certain of the percentages thereunder consistent with the proposed changes to the pilot.

The Commission approved Rule 11.18(d) on a pilot basis on June 10, 2010 to allow other national securities exchanges and FINRA to pause trading in an individual stock when the primary listing market for such stock issues a trading pause due to extraordinary market volatility ("Trading Pause") in a security included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] Other national securities exchanges and FINRA subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4] The Exchange adopted the Pilot prior to commencing operations as a national securities exchange.[5]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 11.18 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein. Accordingly, the Exchange proposes to modify the definition of "Circuit Breaker Securities" in Interpretation and Policy .05 to Rule 11.18 to include all NMS stocks. The Exchange is not proposing any other changes to the text of Rule 11.18 or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.[6]

The proposed changes to the Pilot, if approved, would require that the text of Rule 11.8(d)(2)(D) and (E), which pertain to the pricing obligations that Market Makers[7] are required to adhere to, be amended to ensure consistency with the percentage moves that will trigger a Trading Pause on the primary listing markets (a "Trigger Percentage"). Specifically, in order to adopt the proposed changes to the Pilot, the primary listing markets will apply different Trigger Percentages to the newly added securities, including 30% for NMS stocks priced equal to or greater than $1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs and 50% for NMS stocks priced below $1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs ("Low Priced Securities"). In order to accommodate this change, the Exchange proposes to modify the language of its quoting requirements for Market Makers, which are intended to be within the bounds of the Trigger Percentages.

As set forth in the Exchange's current Rule, the pricing obligations applicable to quotations of Market Makers are based on the "Designated Percentage" and the "Defined Limit," which are determined based on the applicable Trigger Percentage. Currently, the Exchange's formula for calculating the Designated Percentage is the Trigger Percentage minus 2%. The current formula for calculating the Defined Limit is the Trigger Percentage minus 0.5%. The Exchange proposes to apply the existing formulas for calculating the Designated Percentage and Defined Limit to all NMS stocks other than Low Priced securities. Thus, there will be no change to the existing Designated Percentage of 8% and Defined Limit of 9.5% for securities included in the S&P 500, the Russell 1000 or the specified list of ETPs (or 20% and 21.5% when trading pauses are not in effect). For newly added NMS stocks priced $1 or above, this formula will mean a Designated Percentage of 28% and a Defined Limit of 29.5%.

The Exchange proposes to add language stating that for Low Priced Securities the Designated Percentage

[3] Prior to the Exchange's approval to register as a national securities exchange, the Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[5] *See* Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002). The Exchange submitted a proposed rule change shortly after the adoption of the Pilot to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63513 (December 9, 2010), 75 FR 78784 (December 16, 2010) (SR–BYX–2010–007). More recently, the Exchange submitted a proposed rule change to extend the operation of the Pilot until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. Securities Exchange Act Release No. 64214 (April 6, 2011), 76 FR 20430 (April 12, 2011) (SR–BYX–2011–007).

[6] The Exchange notes that it does not currently calculate the percentage necessary for a Trading Pause to be issued, but instead relies on the primary listing market for each security to perform such calculation and disseminate information if and when a Trading Pause is in effect. Nonetheless, the Exchange supports the percentages at which Trading Pauses will trigger, which are being concurrently proposed by the primary listing markets with respect to the NMS stocks that are being added to the Pilot. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange agrees that broader percentages to trigger a Trading Pause would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader percentage to trigger a Trading Pause would also be appropriate for leveraged ETPs. Finally, the Exchange agrees that lower-priced securities should be governed by a broader percentage prior to triggering a Trading Pause than other NMS stocks because lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

[7] The term Market Maker means a Member that acts as a Market Maker on BYX pursuant to Chapter XI of the Exchange's rules.

will be 20 percentage points less than the Trigger Percentage and the Defined Limit will be 18.5 percentage points less than the Trigger Percentage. Accordingly, the Designated Percentage and Defined Limit would be 30% and 31.5%, respectively, for Low Priced Securities.

Similarly, and consistent with the rules of the primary listing markets, the Exchange proposes to state that with respect to securities included in S&P 500, the Russell 1000 or the specified list of ETPs, such products have different quotation requirements at the open and close of trading each day. Specifically, the Exchange proposes to state that with respect to such products, the quotation requirements apply with a Designated Percentage of 20% and a Defined Limit of 21.5% for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market. For all other NMS stocks, the Designated Percentage and Defined Limit will not change for the open or the close of trading.

The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 11.8(d)(2)(D) and (E) would decrease slightly for the proposed new NMS stocks priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause.

The Exchange also proposes to modify Rule 11.8(e), which describes an optional functionality that the Exchange offers to Exchange Market Makers to assist such Market Makers with maintenance of their quotations under Rule 11.8. Specifically, for Market Makers that utilize the functionality, the Exchange enters bids and offers at the Designated Percentage and cancels and replaces the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. If a bid or offer entered pursuant to proposed paragraph (e) is executed, the Exchange will re-enter a new bid or offer on behalf of a Market Maker. In order to reduce the operational burden on the Exchange, the Exchange proposes to use the same Designated Percentage and Defined Limit for all NMS stocks that are being added to the Pilot regardless of the price per share of such stocks. Accordingly, for purposes of its optional quotation functionality, the Exchange will use a consistent Designated Percentage of 28% and a consistent Defined Limit of 29.5% for all NMS stocks not included in S&P 500, the Russell 1000 or the specified list of ETPs. Market Makers managing their own quoting on the Exchange may still quote in accordance with the rule based on the Designated Percentage and Defined Limit established for Low Priced Securities (30% and 31.5%, respectively).

Finally, the Exchange proposes to simplify Rule 11.18 by adopting Interpretation and Policy .01, which will, in chart form, explicitly state the percentages that are applicable under the Rule for different types of securities and at different times.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [10] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause on a primary listing market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BYX–2011–011 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–BYX–2011–011. 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 publicly available. All submissions should refer to File Number SR–BYX–2011–011 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11675 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64431; File No. SR–CHX–2011–09]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Change To Add All NMS Stocks to the Single Securities Circuit Breaker Pilot Program

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 4, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. 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

CHX proposes to amend CHX Article 20, Rule 2 to add all NMS stocks to the pilot program relating to individual securities circuit breakers and amend CHX Article 16, Rule 8 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to CHX Article 20, Rule 2. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 CHX Article 20, Rule 2 to include additional securities in the pilot by which such rule operates, to specify the thresholds used by the primary listing markets in determining when to pause trading and to amend CHX Article 16, Rule 8 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to CHX Article 20, Rule 2.

The Commission approved amendments to CHX Article 20, Rule 2 on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its filing to adopt amendments to CHX Article 20, Rule 2 that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of CHX Article 20, Rule 2 would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of CHX Article 20, Rule 2 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein. The Exchange is also proposing to amend the text of CHX Article 20, Rule 2 to specify the thresholds used by the primary listing markets in determining when to pause trading.

In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. Additionally, in those instances where such securities are priced below $1 and price movements equate to a higher percentage move, the Exchange believes

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). The NYSE submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. *See* Securities Exchange Act Release No. 62284 (June 11, 2010), 75 FR 34498 (June 17, 2010) (SR–NYSE–2010–45).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63498 (December 9, 2010), 75 FR 78310 (December 15, 2010) (SR–CHX–2010–24). Then, in April 2011, the Exchange submitted another rule change to further extend the operation of the Pilot until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64203 (April 6, 2011), 76 FR 20393 (April 12, 2011) (SR–CHX–2011–05).

that an even broader Threshold Move percentage is appropriate.

The proposed changes to the Pilot, if approved, would also require that the text of Article 16, Rule 8, which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to adopt cross-references therein to CHX Article 20, Rule 2 and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from CHX Article 16, Rule 8 addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify CHX Article 16, Rule 8 by explicitly stating the percentages that are applicable thereunder and the times during the trading day when stock pause triggers are not in effect under CHX Article 20, Rule 2 (or comparable rule of another exchange). The Exchange notes that part of this proposed change would be substantive, in that the percentages under CHX Article 16, Rule 8 would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in CHX Article 16, Rule 8 are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in CHX Article 16, Rule 8 are within a narrower range than the percentages necessary to trigger a Trading Pause.

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2011–09 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–CHX–2011–09. 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 publicly available. All submissions should refer to File Number SR–CHX–2011–09 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11674 Filed 5–11–11; 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. 78k–1(a)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64435; File No. SR–BATS–2011–016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Extend a Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

May 6, 2011.

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 May 4,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2011, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility," to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled "Obligations of Market Makers," to conform certain of the percentages thereunder consistent with the proposed changes to the pilot.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility," to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled "Obligations of Market Makers," to conform certain of the percentages thereunder consistent with the proposed changes to the pilot.

The Commission approved Rule 11.18(d) on a pilot basis on June 10, 2010 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause due to extraordinary market volatility ("Trading Pause") in a security included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 11.18 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein. Accordingly, the Exchange proposes to modify the definition of "Circuit Breaker Securities" in Interpretation and Policy .05 to Rule 11.18 to include all NMS stocks. The Exchange is not proposing any other changes to the text of Rule 11.18 or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.[5]

The proposed changes to the Pilot, if approved, would require that the text of Rule 11.8(d)(2)(D) and (E), which pertain to the pricing obligations that Market Makers[6] are required to adhere to, be amended to ensure consistency with the percentage moves that will trigger a Trading Pause on the primary listing markets (a "Trigger Percentage"). Specifically, in order to adopt the proposed changes to the Pilot, the primary listing markets will apply different Trigger Percentages to the newly added securities, including 30% for NMS stocks priced equal to or greater than $1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs and 50% for NMS stocks priced below $1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs ("Low Priced Securities"). In order to accommodate this change, the Exchange proposes to modify the language of its quoting requirements for Market Makers, which are intended to be within the bounds of the Trigger Percentages.

As set forth in the Exchange's current Rule, the pricing obligations applicable to quotations of Market Makers are based on the "Designated Percentage" and the "Defined Limit," which are determined based on the applicable Trigger Percentage. Currently, the Exchange's formula for calculating the Designated Percentage is the Trigger Percentage minus 2%. The current formula for calculating the Defined

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010) (SR–BATS–2010–037). More recently, the Exchange submitted a proposed rule change to extend the operation of the Pilot until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011).

[5] The Exchange notes that it does not currently calculate the percentage necessary for a Trading Pause to be issued, but instead relies on the primary listing market for each security to perform such calculation and disseminate information if and when a Trading Pause is in effect. Nonetheless, the Exchange supports the percentages at which Trading Pauses will trigger, which are being concurrently proposed by the primary listing markets with respect to the NMS stocks that are being added to the Pilot. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange agrees that broader percentages to trigger a Trading Pause would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader percentage to trigger a Trading Pause would also be appropriate for leveraged ETPs. Finally, the Exchange agrees that lower-priced securities should be governed by a broader percentage prior to triggering a Trading Pause than other NMS stocks because lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

[6] The term Market Maker means a Member that acts as a Market Maker on BATS pursuant to Chapter XI of the Exchange's rules.

Limit is the Trigger Percentage minus 0.5%. The Exchange proposes to apply the existing formulas for calculating the Designated Percentage and Defined Limit to all NMS stocks other than Low Priced securities. Thus, there will be no change to the existing Designated Percentage of 8% and Defined Limit of 9.5% for securities included in the S&P 500, the Russell 1000 or the specified list of ETPs (or 20% and 21.5% when trading pauses are not in effect). For newly added NMS stocks priced $1 or above, this formula will mean a Designated Percentage of 28% and a Defined Limit of 29.5%.

The Exchange proposes to add language stating that for Low Priced Securities the Designated Percentage will be 20 percentage points less than the Trigger Percentage and the Defined Limit will be 18.5 percentage points less than the Trigger Percentage. Accordingly, the Designated Percentage and Defined Limit would be 30% and 31.5%, respectively, for Low Priced Securities.

Similarly, and consistent with the rules of the primary listing markets, the Exchange proposes to state that with respect to securities included in S&P 500, the Russell 1000 or the specified list of ETPs, such products have different quotation requirements at the open and close of trading each day. Specifically, the Exchange proposes to state that with respect to such products, the quotation requirements apply with a Designated Percentage of 20% and a Defined Limit of 21.5% for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market. For all other NMS stocks, the Designated Percentage and Defined Limit will not change for the open or the close of trading.

The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 11.8(d)(2)(D) and (E) would decrease slightly for the proposed new NMS stocks priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause.

The Exchange also proposes to modify Rule 11.8(e), which describes an optional functionality that the Exchange offers to Exchange Market Makers to assist such Market Makers with maintenance of their quotations under Rule 11.8. Specifically, for Market Makers that utilize the functionality, the Exchange enters bids and offers at the Designated Percentage and cancels and replaces the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. If a bid or offer entered pursuant to proposed paragraph (e) is executed, the Exchange will re-enter a new bid or offer on behalf of a Market Maker. In order to reduce the operational burden on the Exchange, the Exchange proposes to use the same Designated Percentage and Defined Limit for all NMS stocks that are being added to the Pilot regardless of the price per share of such stocks. Accordingly, for purposes of its optional quotation functionality, the Exchange will use a consistent Designated Percentage of 28% and a consistent Defined Limit of 29.5% for all NMS stocks not included in S&P 500, the Russell 1000 or the specified list of ETPs. Market Makers managing their own quoting on the Exchange may still quote in accordance with the rule based on the Designated Percentage and Defined Limit established for Low Priced Securities (30% and 31.5%, respectively).

Finally, the Exchange proposes to simplify Rule 11.18 by adopting Interpretation and Policy .01, which will, in chart form, explicitly state the percentages that are applicable under the Rule for different types of securities and at different times.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act[9] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause on a primary listing market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–016 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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

All submissions should refer to File Number SR–BATS–2011–016. 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 publicly available. All submissions should refer to File Number SR–BATS–2011–016 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11681 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64434; File No. SR–CBOE–2011–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to the Individual Trading Pause Pilot and CBSX Market-Maker Quoting Obligations

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Stock Exchange, LLC's ("CBSX", the CBOE's stock trading facility) rules to include additional stocks in the individual stock trading pause pilot and to include certain conforming amendments to the CBSX Market-Maker quoting obligation provisions. The Exchange is also proposing certain other conforming and non-substantive amendments to CBSX's individual stock trading pause provisions and CBOE's options trading halt provisions. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

With respect to CBSX, the Exchange proposes to amend Rule 6.3C to include additional stocks in the pilot by which such rule operates and to amend Rules 53.23 and 53.56 to simplify certain aspects of the text while also conforming certain percentages thereunder to the proposed changes to Rule 6.3C. With respect to both CBSX and CBOE, the Exchange proposes to make certain other conforming and non-substantive changes to the text of Rules 6.3C and 6.3.06.

The Commission approved Rule 6.3C on a pilot basis on June 10, 2010 to provide for trading pauses in individual stocks due to extraordinary market volatility ("Trading Pause") in all stocks included in the S&P 500 Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange subsequently received approval to add to the Pilot the stocks included in the Russell 1000 Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider Threshold Move percentage to the newly added stocks. Accordingly, the Exchange proposes to amend the text of Rule 6.3C to provide that the Threshold Move required to trigger an individual stock trading pause for the proposed new stocks, as calculated by the primary listing market, to be 30% or more for such stocks priced at $1 or higher and 50% or more for such stocks priced less than $1.[5] The Exchange believes that these percentages are commensurate

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[4] The Commission approved the addition to the Trading Pause Pilot of the stocks included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08) and 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange has subsequently extended the operation of the Pilot, which was originally set to expire on December 10, 2010, through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Stocks. *See* Securities Exchange Act Release Nos. 63502 (December 9, 2010), 75 FR 78306 (December 15, 2010) (SR–CBOE–2010–112) (extension of Pilot through April 11, 2011) and 64194 (April 5, 2011), 76 FR 20389 (April 12, 2011)(SR–CBOE–2011–031)(extension of Pilot through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the pilot stocks).

[5] Under the proposed rule change, the price of a stock would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

with the characteristics shared by the proposed new stocks within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. With respect to the 30% threshold for stocks priced at $1 or higher and the 50% threshold for stocks priced less than $1, the rationale for this differentiation is that lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

The Exchange proposes to include new subsections 6.3C.03(a), (b) and (c) to reflect the distinction between the applicable Threshold Move percentages for current Pilot stocks and the proposed new stocks to be included within the Pilot.[6] The Exchange also proposes to make certain other conforming and non-substantive changes to the text of Rules 6.3C and 6.3.06.[7] The Exchange is not proposing any other substantive changes to the text of Rule 6.3C or the operation of the Pilot, and will continue in consultation with the other markets to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rules 53.23.01 and 53.56.01, which pertains to the pricing obligations that CBSX Market-Makers are required to adhere to, be amended to update the cross-references therein to Rule 6.3C and the Threshold Moves thereunder. Specifically, the Exchange proposes to remove any text from the two rules addressing NMS stocks that are not subject to the Pilot because no such stocks would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify the two rules by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 6.3C is not in effect.[8] The Exchange notes that part of this proposed change would be substantive, in that the percentages under the two rules would decrease slightly for the proposed new stocks priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on CBSX Market-Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in the rules are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different stocks in a manner that will promote uniformity across markets concerning decisions to pause trading in a stock when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rules 53.23 and 53.56 are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–049. 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

[6] The Exchange is not proposing a change to the Threshold Move percentage applicable to stocks currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the Threshold Move for the existing Pilot stocks be reorganized within Rule 6.3C.

[7] The Exchange is proposing certain other conforming and non-substantive amendments to Rules 6.3C (pertaining to CBSX) and 6.3.06 (pertaining to CBOE). Specifically, the Exchange is proposing to replace certain references in these rules to "Circuit Breaker Stocks" and "eligible underlying stock" with conforming references to "NMS stocks" and "underlying NMS stock." The Exchange is also proposing to include text in these rules confirming that, following an individual stock trading pause, trading will generally resume on the primary listing market after a period of five minutes, which is consistent with the current Pilot and is simply intended to provide more detail in the text explaining the existing Pilot's operation.

[8] The Exchange is also proposing a non-substantive amendment to Rules 53.23 and 53.56 to correct a typographical error (replacing the phrase "Market-Marker" with "Market-Maker").

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2011–049 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11680 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64425; File No. SR–NSX–2011–06]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Its Rules To Extend a Pilot Program Regarding Trading Pauses in Individual Securities Due to Extraordinary Market Volatility to All NMS Stocks and To Make Conforming Changes to Market Maker Quoting Obligations

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, the National Stock Exchange, Inc. ("Exchange" or "NSX") 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend Rule 11.20B to include additional securities in the pilot by which such rule operates and amend Rule 11.8 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 11.20B.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to amend Rule 11.20B to include additional securities in the pilot by which such rule operates and amend Rule 11.8 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 11.20B.

NSX Rule 11.20B (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) was approved by the Securities and Exchange Commission (the "Commission") on June 10, 2010 on a pilot basis ("Pilot") to end on December 10, 2010.[3] The Pilot end date was subsequently extended until August 11, 2011 or to coincide, if applicable, with the earlier implementation date of the limit up/limit down mechanism.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner.

As the Exchange noted in its filing to adopt NSX Rule 11.20B, during the Pilot period, the Exchange, in conjunction with other markets in the national market system, would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. When initially adopted on June 10, 2010, the pilot included all securities included within the S&P 500® Index. On September 10, 2010 NSX Rule 11.20B was expanded to securities included in the Russell 1000® Index ("Russell 1000") and specified Exchange Traded Products ("ETPs"). [5]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 11.20B need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein. In addition, a wider Threshold Move percentage would apply to the newly added securities. Because the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volume, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. Securities priced below $1 are proposed to have a higher Threshold Move than higher priced securities because lower-priced securities may tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security.

Accordingly, the Exchange proposes to expand the definition of the term "Circuit Breaker Securities" set forth in Commentary .05 to Rule 11.20 to include all NMS stocks. The Exchange

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NSX–2010–05).

[4] *See* Securities Exchange Act Release No. 63512 (December 9, 2010), 75 FR 78786 (December 16, 2010) (SR–NSX–2010–17); and Securities Exchange Act Release No. 64213 (April 6, 2011), 76 FR 20409 (April 12, 2011) (SR–NSX–2011–04).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NSX–2010–08).

proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[6] The Exchange believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Pilot to reduce the negative impacts of unanticipated price movements in a security. The Exchange proposes to include new subsections 11.20B(a)(1), (2) and (3) to reflect the distinction between the applicable Threshold Move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.[7] The Exchange is not proposing any other changes to the text of Rule 11.20B or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 11.8(a)(1)(B)(iv) and (v), which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to correct the cross-references therein to Rule 11.20B and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from Rule 11.8(a)(1)(B)(iv) and (v) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 11.8(a)(1)(B)(iv) and (v) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 11.20B is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 11.8(a)(1)(B)(iv) and (v) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 11.8(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 11.8(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2011–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2011–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[6] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

[7] The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein requires that certain rule text pertaining to the Threshold Move for the existing Pilot securities be reorganized within Rule 11.20B(a).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

you wish to make publicly available. All submissions should refer to File Number SR–NSX–2011–06 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11673 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64422; File No. SR–NYSEArca–2011–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11 To Include Additional Securities in the Pilot by Which Such Rule Operates and Amending NYSE Arca Equities Rule 7.23 To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 7.11

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 prepared by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.11 to include additional securities in the pilot by which such rule operates and amend NYSE Arca Equities Rule 7.23 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 7.11. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Rule 7.11 to include additional securities in the pilot by which such rule operates and amend Rule 7.23 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 7.11.

The Commission approved Rule 7.11 on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its filing to adopt Rule 7.11 that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 7.11 would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 7.11 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider Threshold Move percentage to the newly added securities. Accordingly, the Exchange proposes to delete Commentary .01 to Rule 7.11, as the text therein would no longer be necessary.

The Exchange proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[5] The Exchange believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500, Russell 1000, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). The Exchange submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. *See* Securities Exchange Act Release No. 62281 (June 11, 2010), 75 FR 34504 (June 17, 2010) (SR–NYSEArca–2010–52).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63496 (December 9, 2010), 75 FR 78285 (December 15, 2010) (SR–NYSEArca–2010–114). The Pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64209 (April 6, 2011), 76 FR 20422 (April 12, 2011) (SR–NYSEArca–2011–14).

[5] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

be appropriate for leveraged ETPs. In addition, the Exchange believes that a 50% threshold move is appropriate for securities trading under a dollar to reflect that price movements of such lower-priced stocks equate to a higher percentage move than a similar price change would be for a higher-priced stock.

The Exchange proposes to include new subsections 7.11(a)(i), (ii) and (iii) to reflect the distinction between the applicable Threshold Move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.[6] The Exchange is not proposing any other changes to the text of Rule 7.11 or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 7.23(a)(1)(B)(iii) and (iv), which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to correct the cross-references therein to Rule 7.11 and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from Rule 7.23(a)(1)(B)(iii) and (iv) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 7.23(a)(1)(B)(iii) and (iv) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 7.11 is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 7.23(a)(1)(B)(iii) and (iv) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 7.23(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 7.23(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–26. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2011–26 and should be submitted on or before June 2, 2011

[6] The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the Threshold Move for the existing Pilot securities be reorganized within Rule 7.11.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11672 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64419; File No. SR–Phlx–2011–64]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Rule 3100(a)(4) To Include Additional Securities in the Pilot by Which Such Rule Operates

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, NASDAQ OMX PHLX LLC ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3100(a)(4) to include additional securities in the pilot by which such rule operates.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 3100. Trading Halts on PSX

(a) Authority To Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in paragraph (c):

(1)–(3) No change.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. During the pilot, the term "Circuit Breaker Securities" shall mean *any NMS stock* [the securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products].

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 3100(a)(4) to include additional securities in the pilot by which such rule operates.

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, of proposed rule changes submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC ("NASDAQ"), New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), NYSE Arca, Inc. ("NYSE Arca"), and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to securities comprising the Russell 1000® Index and specified Exchange Traded Products.[5]

In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX system, the Exchange adopted Rule 3100(a)(4) so that it could participate in the pilot program.[6] On September 29, 2010, the Exchange amended Rule 3100(a)(4) to include stocks comprising the Russell 1000® Index and specified Exchange Traded Products.[7] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[8] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[9]

The Exchanges have continued to assess whether additional securities need to be added to the Pilot and whether the parameters of the Circuit Breaker Pilot needs to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchanges are proposing to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider price move percentage to the newly

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE Amex, NYSE Arca, and NASDAQ.

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[6] *See* Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[7] *See* Securities Exchange Act Release No. 63004 (September 29, 2010), 75 FR 61547 (October 5, 2010) (SR–Phlx–2010–126).

[8] *See* Securities Exchange Act Release No. 63504 (December 9, 2010), 75 FR 78304 (December 15, 2010) (SR–Phlx–2010–174).

[9] *See* Securities Exchange Act Release No. 64175 (April 4, 2011), 76 FR 19823 (April 8, 2011) (SR–Phlx–2011–44).

added securities.[10] Specifically, NYSE, NYSE Amex, NYSE Arca, and NASDAQ, as the listing markets, are proposing to set the price move required to trigger a trading pause for the proposed new securities to be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1. The listing markets believe that applying a broader percentage to securities priced less than $1 compared to those priced above $1 is appropriate given that lower-priced securities tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security. The listing markets also believe that, since the newly added securities are not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, they are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchanges believe that broader price move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader price move percentage would also be appropriate for leveraged ETPs. As such, the Exchange proposes to delete language concerning the limited application of pauses in Circuit Breaker Securities from the rule's text, as the text therein would no longer be necessary, and to define Circuit Breaker Securities as all NMS stocks.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks, consistent with similar proposals submitted by the other Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–64. 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 publicly available. All submissions should refer to File Number SR–Phlx–2011–64 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11669 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[10] Certain of the Exchanges that have market maker requirements are modifying their market maker obligations to fit within these new Pilot price move percentages.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64429; File No. SR–BYX–2011–008]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

May 6, 2011.

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 April 29, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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

The Exchange proposes to amend the fee schedule applicable to Members [5] of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 2, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective May 2, 2011, in order to amend its pricing to add displayed liquidity. The Exchange currently maintains a tiered pricing structure applicable to added displayed liquidity in securities priced $1.00 and above, under which any Member adding a daily average of 10 million shares or more of liquidity (including displayed and non-displayed liquidity) during a month is able to add displayed liquidity without charge, while any Member adding a daily average of less than 10 million shares of liquidity during a month is charged $0.0002 per share. The Exchange proposes to replace its existing tiered pricing structure with a structure that allows Members to add liquidity free of charge to the extent such liquidity sets the national best bid or offer (the "NBBO Setter Program") so long as the Member submitting the order achieves the applicable average daily volume ("ADV") requirement, as described below.

An order that is entered at the most aggressive price both on the BYX order book and according to then-current consolidated data from the applicable securities industry processor ("SIP") will be determined to have set the national best bid or offer for purposes of the NBBO Setter Program without regard to whether a more aggressive order is entered prior to the original order being executed. The Exchange's affiliate, BATS Exchange, Inc., has adopted similar pricing for its options platform ("BATS Options").[6]

In conjunction with the adoption of the NBBO Setter Program, the Exchange proposes to modify the volume requirement of the tiered pricing structure from an ADV requirement of at least 10 million shares added per day in a given month to an ADV requirement of at least 0.1% of the total consolidated volume ("TCV") during the month. Accordingly, rather than basing its pricing structure on a static number of shares, the Exchange proposes to modify its tiered pricing structure such that it is based on TCV, and is thus variable based on overall volumes in the securities industry. To illustrate the Exchange's application of TCV, if the overall volume of securities traded as reported by all exchanges and trade reporting facilities is 100 billion shares in a given month, this amount will be used as the TCV against which the Exchange's tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 100 billion shares divided by 20 trading days is an average TCV of 5 billion shares per day. Using these volumes as an example, to reach the Exchange's proposed tier of 0.10% of average TCV, and thus qualify for the NBBO Setter Program, a Member would need to have an ADV of at least 5 million shares traded on BYX per day. If, in the next month, volumes doubled, and the TCV for the month was 200 billion shares, then a Member would need to have an ADV of at least 10 million shares traded on BYX per day to have an ADV equal to 0.10% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of shares is a preferable measure of overall activity given the fluctuation of volumes in the securities industry. Further, subject to increased volumes in the securities industry, a volume requirement of 0.10% of average TCV is likely less than 10 million shares per day, and is thus a reduction from the Exchange's current volume requirement for tiered pricing.

In addition, the Exchange proposes to adopt definitions for both ADV and TCV. For purposes of the fee schedule, the proposed definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis. The Exchange currently applies its tiered pricing structure based on added shares only. Accordingly, in addition to 0.10% of TCV likely being a lower requirement than 10 million shares per day (absent a significant increase in volumes) the proposed tiered rates will also be easier to achieve because all shares traded, added and removed, will be included in the calculation of ADV. The Exchange proposes to make clear in the definition of ADV that routed contracts are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV. The Exchange also proposes to allow affiliated entities to aggregate their order flow for purposes of the Exchange's determination of ADV with respect to pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. The Exchange will verify such affiliate using a Member's Form BD, which lists control affiliates.

As proposed, TCV is defined as total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] *See* Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR–BATS–2010–038) (adopting an NBBO Setter Rebate for BATS Options); *see also* Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2011) (SR–BATS–2011–012) (modifying the NBBO Setter Program for BATS Options to include a volume requirement based on TCV).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues.

The establishment of the NBBO Setter Program may result in a small increase in fees for Members currently reaching the Exchange's 10 million share ADV tier who are able to add displayed liquidity without a fee. Although such Members (and likely several Members not currently reaching such tier) will likely meet the volume requirement of the NBBO Setter Program, as proposed, only those executions that were the result of such a Member adding liquidity and that set the NBBO will be added without fee. Nonetheless, the Exchange's standard displayed liquidity adding fee of $0.0002 per share still remains lower than other markets that impose a fee to add liquidity, such as EDGA Exchange ($0.00025 charge per share) and NASDAQ OMX BX ($0.0014 charge per share). Additionally, the Exchange believes that the NBBO Setter Program will incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. Also, to the extent the proposed changes will result in increased fees charged to Members, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange.

The Exchange believes that the new tier rate based on TCV represents a fair and equitable allocation of reasonable dues, fees, and other charges as it is aimed at incentivizing liquidity for high volume providers, which results in increased volume on BYX. By combining this volume tier with the NBBO Setter program, the Exchange is incentivizing aggressively priced liquidity from such liquidity providers. The increased, aggressively priced liquidity benefits all investors by deepening BYX's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as the liquidity adding fee tier maintained by the Exchange have been widely adopted by numerous exchanges, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality. Additionally, the Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BYX–2011–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2011–008. This file number

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2011–008 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11624 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64436; File No. SR–OCC–2011–05]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Flexibility to the Options Clearing Corporation With Respect to Its Obligations To Pay Settlement Amounts to Clearing Members Generally as Well as in Emergency Situations

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 28, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 purpose of the proposed rule change is to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise OCC's By-Laws and Rules to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations. The proposed rule amendments would change the current daily deadline for OCC to pay settlement amounts to clearing members from 10 a.m. to 1 p.m. (All times referred to in this filing are Central Time). In addition, in the event that an emergency condition exists, the Board of Directors ("Board") or an authorized executive officer of OCC would be authorized to extend OCC's obligation to pay settlement amounts to clearing members beyond the 1 p.m. deadline.

Currently, each business day morning, OCC is obligated to collect cash owed by its clearing members for the prior day's settlement activity by 9 a.m. OCC, in turn, is obligated to pay cash owed to its clearing members for the prior day's settlement activity by 10 a.m. This one-hour window is designed to ensure that OCC has collected all required settlement funds before having to disburse any settlement funds to its clearing members. Daily settlement activity includes obligations relating to: (1) The net premium payments arising from the prior day's option purchases and sales, (2) the mark-to-market of futures contracts and stock loan positions, and (3) exercises and assignments of cash-settled option contracts.

OCC's settlement banks routinely approve and are required to honor the associated settlements made by OCC and OCC's clearing members within these time frames. On most business days, the entire bank approval process, which irrevocably obligates each settlement bank to make settlement, is completed by 8:30 a.m.

Under OCC's rules, a failure by OCC to pay its daily settlement obligations to clearing members by 10 a.m. constitutes a default. During discussions amongst OCC's senior management of various potential extreme default and liquidity squeeze scenarios, including the possible default of one of OCC's largest clearing members, OCC analyzed the risk associated with not being able to immediately access liquidity resources in time to meet the 10 a.m. deadline for OCC to pay settlement amounts to clearing members. The deadline may be difficult to meet if, for example, OCC learned of a default near the 9 a.m. deadline. In such a circumstance, OCC would have only one hour or less (considering the time needed to process and communicate information) to access the funds necessary to meet the 10 a.m. deadline.

OCC's immediate liquidity resources rely heavily upon its $2.0 billion revolving credit facility (backed by Treasuries held in the clearing fund). A one-hour advance notice is required prior to OCC drawing funds from the credit facility. Beyond the credit facility, it would likely take more than one hour to raise cash by borrowing against the remaining clearing fund Treasuries (*i.e.,* those Treasuries not securing the credit facility) either through tri-party repurchase agreements or a traditional bank loan.

The main benefit of moving the deadline to 1 p.m. for OCC to pay clearing members settlement amounts is that it allows up to four hours (rather than one) within which OCC can meet its daily settlement requirement without being required to declare an emergency in order to do so. In addition, based on discussions with its settlement banks,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

OCC believes that notwithstanding a change in the current 10 a.m. deadline to 1 p.m., the settlement banks will continue the current practice of approving settlements as soon as they can make a credit determination (*i.e.,* confirm present funds or extend credit to the customer) and process OCC's payment requests, which are tasks that are typically completed by 8:30 a.m.

OCC also has incorporated in its rules the authority to extend the deadline for it to pay settlement amounts to clearing members to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, if necessary, during an emergency situation.[4] Such an extension is consistent with the emergency authority other clearinghouses have to deal with late settlement scenarios. The rule amendments would authorize the Board, Chairman of the Board, Management Vice Chairman, or President of OCC to delay settlement beyond 1 p.m. in emergency situations. The rule amendments would authorize the named officers to take such action because the decision may need to be made under time constraints where the Board (or even the Membership/Risk Committee) could not be convened in time to take the necessary action.[5] OCC anticipates that the emergency authority would be used infrequently, if ever. Under proposed Rule 505, such authority could only be used upon a determination by the Board or an authorized officer that extension of the settlement time is necessary or advisable for the protection of OCC or otherwise in the public interest. In the event that the emergency authority is exercised, a number of protections are built into the process. For example, the determination and the reasons for the extension will be promptly reported to the Commission, the Commodities Futures Trading Commission, and any other regulatory or supervisory authorities having jurisdiction over OCC. In addition, the clearing members will be notified of the extension, and a report outlining the emergency actions will be maintained in OCC's records.

For drafting clarity and economy, the specific settlement times have been removed from the applicable rules, a new definition of "settlement day" has been created, and a revised definition of "settlement time" has been inserted in Article I of the By-Laws.

OCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because the rule amendments are designed to promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest by giving OCC flexibility to make settlement payments to its clearing members in a timely manner during normal and abnormal market conditions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 Commissions 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–OCC–2011–05 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–OCC–2011–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_05.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2011–05 and should be submitted on or before June 2, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11623 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[4] In the event that OCC is unable to pay settlement amounts to clearing members by the close of the Fedwire Funds Service on a settlement day due to an emergency or force majeure condition, OCC will seek appropriate relief from the regulatory or supervisory authorities having jurisdiction over OCC.

[5] Similar authority is provided to the OCC Chairman (or the Board) to summarily suspend a clearing member. *See* OCC Rule 1102.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64430; File No. SR–NASDAQ–2011–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Midpoint Peg Post-Only Order

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 28, 2011 The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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 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 is filing this proposed rule change to establish the Midpoint Peg Post-Only Order as a new order type. NASDAQ proposes to implement the rule change on May 9, 2011 or as soon thereafter as practicable. The text of the proposed rule change is available at *http://www.nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to provide enhanced functionality, NASDAQ proposes to adopt an additional order type known as the Midpoint Peg Post-Only Order. Like a regular Midpoint Peg Order, a Midpoint Peg Post-Only Order is a non-displayed order that is priced at the midpoint between the national best bid and best offer ("NBBO") (as determined using the consolidated tape). However, like a Post-Only Order, the Midpoint Peg Post-Only Order does not remove liquidity from the System upon entry if it would lock a non-displayed order on the NASDAQ Market Center system (the "System"). Rather, the Midpoint Peg Post-Only Order will post and lock the pre-existing order, but will remain undisplayed.[3] For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. By contrast, a regular Midpoint Peg Order would execute against the posted order at $1.105. If the Midpoint Peg Post-Only Order would cross a pre-existing order, however, the crossing orders will execute.

Midpoint Peg Post-Only Orders that post to the book and lock a pre-existing non-displayed order will execute against an incoming order only if the price of the incoming buy (sell) order is higher (lower) than the price of the pre-existing order. This restriction ensures that the non-displayed Midpoint Peg Post-Only Order will not execute before an order already on the book unless the incoming order against which it executes has price priority over the already posted order. For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. If another Midpoint Peg Order to buy is entered, it would also post to the book, rather than executing against the Midpoint Peg Post-Only Order. On the other hand, an order to buy at $1.11 would execute against the Midpoint Peg Post-Only Order, receiving $0.005 price improvement. Thus, the order provides a means by which a market participant may offer price improvement in exchange for receiving greater certainty with respect to its trading costs.

If, on the other hand, a Midpoint Peg Order and a Midpoint Peg Post-Only Order are locked, and a Midpoint Peg Order is entered on the same side of the market as the Midpoint Peg Post-Only Order, the new order will execute against the original Midpoint Peg Order. Thus, in the above example, if a Midpoint Peg Order to buy at $1.105 is locked by a Midpoint Peg Post-Only Order to sell at $1.105, a subsequent Midpoint Peg Order to sell at $1.105 would execute against the original buy order. This is the case because the market participant entering the Midpoint Peg Post-Only Order has expressed its intention not to execute against posted liquidity, and therefore cedes execution priority to the new order.

A Midpoint Peg Post-Only Order will only be posted to the book at a price of more than $1. Accordingly, if the midpoint between the NBBO for a particular stock is $1 or less, all Midpoint Peg Post-Only Orders for that stock will be rejected or cancelled, as applicable. This limitation reflects the fact that the difference between the inside market and the midpoint for stocks at this price level is likely to be extremely small, and therefore the price improvement opportunities associated with the order in such stock are unlikely to justify making the order available. NASDAQ's opening cross (Rule 4752), halt and imbalance cross (Rule 4753), and closing cross (Rule 4754) require various ongoing calculations of the best bid and offer within NASDAQ. For purposes of these calculations, a Midpoint Peg Post-Only Order to buy (sell) that is locking another non-displayed order shall be deemed to have a price equal to the price of the highest sell order (lowest buy order) that would be eligible to execute against the Midpoint Peg Post-Only Order in such circumstances.[4]

The proposed order is virtually identical to functionality previously introduced by the National Stock Exchange ("NSX").[5] NSX's Zero Display

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SEC Rule 610(d) under Regulation NMS, 17 CFR 242.610(d), restricts displayed quotations that lock or cross protected quotations in NMS Stocks, but does not apply to non-displayed trading interest.

[4] In addition to amending Rule 4751 to add a description of the Midpoint Peg Post-Only Order's functionality, NASDAQ is also amending the list of order types in Rule 4755 to add a reference both to the new order type and also the existing Post-Only Order, which had been inadvertently omitted from that rule when the Post-Only Order was introduced.

[5] *See* Securities Exchange Act Release No. 57311 (February 12, 2008), 73 FR 9148 (February 19, 2008) (SR–NSX–2008–03) (amending NSX Rule 11.14 to adopt a Zero Display Reserve Order, which includes both a pegging option and a post-only option).

Order can be pegged to the midpoint between the national best bid and offer ("NBBO") and can also be designated as a Post Only Order. "If a Zero Display Order is designated as a Post Only Order and is immediately marketable, the order will not be executed, but will be posted to the NSX Book, unless the contra-side order with which it would interact is a Zero Display Order that has not been designated as Post Only, in which case the order will be executed."[6] In that case, however, the incoming Zero Display Order that has been designated as Post Only is deemed to provide liquidity for purposes of NSX's fees and rebates, while "the non-Post Only Zero Display Order will be considered liquidity taking by the Exchange, regardless of which order arrives at NSX first."[7] Because all orders priced at the midpoint between the NBBO must be non-displayed (since they would otherwise establish a new NBBO), NSX's Zero Display Order functionality allows conditions under which an incoming Post Only Zero Display order, pegged to the midpoint and designated as Post Only, locks an identical order on the other side of the market and both orders post to the book. As NSX noted, however, "[t]his will not result in a locking or crossing quote, because the Zero Display Order will not be displayed and therefore will not be a quote."

NASDAQ believes that such orders serve a valid purpose in the current market environment. Although Rule 610 limits access fees, market participants remain focused on their trading costs, and in a pricing environment characterized by fees on one side of a trade being used to fund rebates on the other side,[8] it is entirely understandable that some market participants may wish to structure their trading activity in a manner that is more likely to avoid a fee and earn a rebate. In this respect, the order is conceptually similar to a limit order: just as a limit order allows market participants to control the price that they will pay or receive for a stock, the proposed new order will allow market participants to exercise greater control over the fees associated with order execution. Moreover, the order type will operate in a manner calculated to require members posting the order generally to provide price improvement in order to justify the ability to earn a rebate. Thus, as long as a Midpoint Peg Post-Only Order is locking a pre-existing Midpoint Order, the order can execute only if it offers price improvement. By means of price improvement, the market participant effectively shares a portion of its rebate with the counterparty with whom it is matched, thereby reducing its trading costs as well.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Midpoint Peg Post-Only Order is designed to provide market participants with better control over their execution costs and to provide a means to offer price improvement opportunities.

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. The Midpoint Peg Post-Only Order will enhance the functionality offered by NASDAQ to its members, thereby promoting its competitiveness with other exchanges and non-exchange trading venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (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[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–059. 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

[6] *Id.*

[7] *Id.*

[8] It should be noted that some markets, such as NASDAQ OMX BX, the BATS–Y Exchange, the EDGA Exchange, and CBSX, feature fees for liquidity providers and rebates for liquidity takers, while all other cash equities markets now have a taker fee/maker rebate structure.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

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–NASDAQ–2011–059 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11619 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64432; File No. SR–EDGA–2011–15]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend EDGA Rules 11.13 and 11.14

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, EDGA Exchange, Inc. ("EDGA" or the "Exchange") 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 prepared by EDGA. 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 EDGA Rules 11.13 and 11.14 to include additional securities in the pilot by which such rule operates. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 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 EDGA Rules 11.13 and 11.14 to include additional securities in the pilot by which such rule operates.

Background

EDGA Rule 11.14 allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities"). Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Breaker Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was subsequently extended until April 11, 2011.[4] It was further extended then through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

As the Exchange noted in its filing to adopt EDGA Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 ("Russell 1000") and specified ETPs to the pilot beginning in September 2010.[6] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange has continued to assess whether additional securities need to be added to the pilot and whether the parameters of Rule 11.14 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the pilot that are not already included therein. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. As a result, the Exchange notes that the primary listing markets will also apply a wider Trading Pause Trigger Price, as defined in Rule 11.13(c)(4), to the newly added

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63514 (December 9, 2010) (SR–EDGA–2010–23), 75 FR 78783 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64204 (April 6, 2011) (SR–EDGA–2011–11), 76 FR 20394 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).

securities.[7] Similarly, because leveraged ETPs trade at a ratio against the associated index, primary listing markets will also apply a broader Trading Pause Trigger Price for leveraged ETPs. Accordingly, the Exchange proposes to delete the last sentence in Interpretations and Policies .05, which defines the scope of the pilot, as the text therein would no longer be necessary as well as delete the reference to "Circuit Breaker Securities" in Rule 11.13(c)(4) and replace it with "NMS stock".

The Exchange is not proposing any other changes to the text of Rules 11.13, 11.14, or the operation of the pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the pilot to cover all NMS stocks that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2011–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2011–15. 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 EDGA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2011–15 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11618 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64428; File No. SR–EDGX–2011–14]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend EDGX Rules 11.13 and 11.14

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, EDGX Exchange, Inc. ("EDGX" or the "Exchange") 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 prepared by EDGX. 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 EDGX Rules 11.13 and 11.14 to include additional securities in the pilot by

[7] Other primary listing markets are submitting rule filings describing these Trading Pause Trigger Prices. The Exchange notes that the rationale for the differentiation in Trading Pause Trigger Prices between securities at or above $1 (30% threshold) and securities below $1 (50% threshold) is that lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

which such rule operates. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 EDGX Rules 11.13 and 11.14 to include additional securities in the pilot by which such rule operates.

Background

EDGX Rule 11.14 allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities"). Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Breaker Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGX Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was subsequently extended until April 11, 2011.[4] It was further extended then through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5]

As the Exchange noted in its filing to adopt EDGX Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGX Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 ("Russell 1000") and specified ETPs to the pilot beginning in September 2010.[6] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange has continued to assess whether additional securities need to be added to the pilot and whether the parameters of Rule 11.14 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the pilot that are not already included therein. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. As a result, the Exchange notes that the primary listing markets will also apply a wider Trading Pause Trigger Price, as defined in Rule 11.13(c)(4), to the newly added securities.[7] Similarly, because leveraged ETPs trade at a ratio against the associated index, primary listing markets will also apply a broader Trading Pause Trigger Price for leveraged ETPs. Accordingly, the Exchange proposes to delete the last sentence in Interpretations and Policies .05, which defines the scope of the pilot, as the text therein would no longer be necessary as well as delete the reference to "Circuit Breaker Securities" in Rule 11.13(c)(4) and replace it with "NMS stock."

The Exchange is not proposing any other changes to the text of Rules 11.13, 11.14, or the operation of the pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the pilot to cover all NMS stocks that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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.

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGX–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63507 (December 9, 2010) (SR–EDGX–2010–22), 75 FR 78787 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64205 (April 6, 2011) (SR–EDGX–2011–10), 76 FR 20417 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGX–2010–05), 75 FR 56618 (September 16, 2010).

[7] Other primary listing markets are submitting rule filings describing these Trading Pause Trigger Prices. The Exchange notes that the rationale for the differentiation in Trading Pause Trigger Prices between securities at or above $1 (30% threshold) and securities below $1 (50% threshold) is that lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of EDGX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2011–14 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11617 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64427; File No. SR–BX–2011–025]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend IM–4120–3 To Include Additional Securities in the Pilot by Which Such Rule Operates and Amend Rule 4613(a) To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Price Move Percentages That Trigger a Circuit Breaker Pilot Pause

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, NASDAQ OMX BX, Inc. ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend IM–4120–3 to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to price move percentages that trigger a circuit breaker pilot pause.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

IM–4120–3. Circuit Breaker Securities Pilot

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. During the pilot, the term "Circuit Breaker Securities" shall mean *all NMS stocks*[the securities included in the S&P 500® Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products].

* * * * *

4613. Market Maker Obligations

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) No change.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A)–(C) No change.

(D) For purposes of this Rule, the [term] "Designated Percentage" shall *be 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and*

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1,[mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points.] *except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1.* [For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Designated Percentage calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Designated Percentage will assume a trigger percentage of 32%.]

(E) For purposes of this Rule, the [term] "Defined Limit" shall *be 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1,*[mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less one-half (½) percentage point.] *except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1.* [For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Defined Limit calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Defined Limit calculation will assume a trigger percentage of 32%.]

(F)–(K) No change.

(b)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IM–4120–3 to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to price move percentage triggers of the trading pause recognized under Rule 4120(a)(11).

The Commission approved Rule 4120(a)(11) on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its filing to adopt Rule 4120(a)(11) that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 4120(a)(11) would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000") and a specified list of Exchange Traded Products ("ETPs").[4]

The Exchanges have continued to assess whether additional securities need to be added to the Pilot and whether the parameters of the Pilot needs to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchanges are proposing to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider price move percentage to the newly added securities.[5] Accordingly, the Exchange proposes to delete language concerning the limited application of pauses in Circuit Breaker Securities from the rule's text, as the text therein would no longer be necessary, and to define Circuit Breaker Securities as all NMS stocks.

The NYSE, NYSE Amex, NYSE Arca, and NASDAQ, as the listing markets, are proposing to set the price move required to trigger a trading pause for the proposed new securities to be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[6] The listing markets believe that applying a broader percentage to securities priced less than $1 compared to those priced above $1 is appropriate given that lower-priced securities tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security. The listing markets also believe that these percentages are commensurate with the

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162). On March 31, 2011, the Exchange submitted a proposed rule change to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64176 (April 4, 2011), 76 FR 19821 (April 8, 2011) (SR–BX–2011–018).

[5] Certain of the Exchanges that have market maker requirements are modifying their market maker obligations to fit within these new Pilot price move percentages.

[6] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader price move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader price move percentage would also be appropriate for leveraged ETPs.

The proposed changes to the Pilot, if approved, would require that the text of Rule 4613(a), which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to correct the cross-references therein to Rule 4120(a)(11) and the price move thereunder. Specifically, the Exchange proposes to remove any text from Rule 4613(a) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 4613(a) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 4120(a)(11) is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 4613(a) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–025. 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 publicly available. All submissions should refer to File Number SR–BX–2011–025 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11616 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64424; File No. SR–FINRA–2011–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) and FINRA Rule 6272 (Character of Quotations) To Include all NMS Stocks

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, 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 prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to expand the scope of the trading pause pilot to include all NMS stocks covered by the trading pause pilot rules of a primary listing market and FINRA Rule 6272 (Character of Quotations) to conform the quotation requirements on the Alternative Display Facility ("ADF") to those in place on the national securities exchanges.

The text of the proposed rule changes is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 to expand the scope of the trading pause pilot to include all NMS stocks covered by the trading pause pilot rules of a primary listing market.

FINRA Rule 6121.01 provides that if a primary listing market has issued an individual stock trading pause under its rules, FINRA will halt trading otherwise than on an exchange in that security until trading has resumed on the primary listing market. The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations ("SROs") in consultation with Commission staff, and is currently only applicable to the S&P 500® Index,[3] the Russell 1000® Index and a pilot list of Exchange Traded Products ("ETPs").[4]

FINRA, in coordination with other SROs, now is expanding the scope of the trading pause pilot to include all NMS stocks that are not already included therein. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or the pilot list of ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, consistent with the approach of the primary listing markets, broader threshold move percentages would be appropriate for these securities.[5] Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader threshold move percentage would also be appropriate for leveraged ETPs.

FINRA and the other SROs continue to assess the effect of the trading pause pilot on the marketplace, whether other initiatives should be adopted in lieu of the current pilot,[6] and whether the parameters for invoking a trading pause continue to be appropriate and whether they should be modified.

In 2010, the SEC also approved amendments to FINRA Rule 6272 to ensure consistency in quotation requirements across markets by imposing the same limitations on a Registered Reporting ADF Market Maker's quotations on the ADF that apply to market makers on national securities exchanges.[7] The amendments were intended to eliminate trade executions against market maker "placeholder" quotations that are priced far away from the inside market, commonly known as "stub quotes." Under Rule 6272, limitations on permissible quotations are determined by the individual character of the security, the time of day in which the quote is entered, and any applicable stock trading pause triggers. FINRA is proposing amendments to the ADF quotation requirements in Rule 6272 to conform those requirements to the proposed amendments to the quotation requirements of the national securities exchanges.[8]

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become operative on a pilot basis as soon as possible.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] 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 the proposed rule change meets these requirements in that it expands the scope of the pilot to cover all NMS stocks covered by the trading pause pilot rules of a primary listing market and promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The proposed rule change also continues to ensure that market makers are subject to the same quotation requirements on the ADF that they would be subject to on a national securities exchange, thus ensuring

[3] *See* Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR–FINRA–2010–025).

[4] *See* Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–033).

[5] FINRA understands that the primary listing markets are proposing that these securities be subject to a 30% threshold when priced at or above $1, and a 50% threshold when priced below $1. The rationale for this differentiation is that lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

[6] On April 5, 2011, the SEC announced that national securities exchanges and FINRA filed a proposal to establish a new "limit up-limit down" mechanism to address extraordinary market volatility in U.S. equity markets. Available at: *http://www.sec.gov/news/press/2011/2011-84.htm.*

[7] *See* Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010).

[8] The proposed rule change is based on similar proposed rule changes being filed by numerous national securities exchanges.

[9] 15 U.S.C. 78*o*–3(b)(6).

consistent quotation requirements across markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–023. 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 publicly available. All submissions should refer to File Number SR–FINRA–2011–023 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11614 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64421; File No. SR–NYSEAmex–2011–32]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Rule 80C—NYSE Amex Equities To Include Additional Securities in the Pilot by Which Such Rule Operates and Amending Rule 104—NYSE Amex Equities To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 80C

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 prepared by NYSE Amex. The Commission is publishing this notice to solicit comments on the proposed rule change, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 80C—NYSE Amex Equities to include additional securities in the pilot by which such rule operates and amend Rule 104—NYSE Amex Equities to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C.

The Commission approved Rule 80C on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").[3] The Exchange noted in its

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–

filing to adopt Rule 80C that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 80C would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000®≤ Index ("Russell 1000") as well as the Invesco PowerShares QQQ exchange-traded fund (symbol: QQQQ).[4]

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 80C need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider Threshold Move percentage to the newly added securities. Accordingly, the Exchange proposes to delete Supplementary Material .10 to Rule 80C, as the text therein would no longer be necessary.

The Exchange proposes that the Threshold Move required to trigger a Trading Pause for the proposed new securities be 30% or more for such securities priced at $1 or higher and 50% or more for such securities priced less than $1.[5] The Exchange believes that these percentages are commensurate with the characteristics shared by the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500, Russell 1000, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader Threshold Move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader Threshold Move percentage would also be appropriate for leveraged ETPs. In addition, the Exchange believes that a 50% threshold move is appropriate for securities trading under a dollar to reflect that price movements of such lower-priced stocks equate to a higher percentage move than a similar price change would be for a higher-priced stock.

The Exchange proposes to include new subsections 80C(a)(i), (ii) and (iii) to reflect the distinction between the applicable Threshold Move percentages for current Pilot securities and the proposed new securities to be included within the Pilot.[6] The Exchange is not proposing any other changes to the text of Rule 80C or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.

The proposed changes to the Pilot, if approved, would require that the text of Rule 104(a)(1)(B)(iii) and (iv), which pertains to the pricing obligations that Designated Market Makers ("DMMs") are required to adhere to, be amended to correct the cross-references therein to Rule 80C and the Threshold Move thereunder. Specifically, the Exchange proposes to remove any text from Rule 104(a)(1)(B)(iii) and (iv) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 104(a)(1)(B)(iii) and (iv) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 80C is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 104(a)(1)(B)(iii) and (iv) would decrease slightly for the proposed new securities priced at $1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on DMM pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 104(a)(1)(B) are within a narrower range than the percentages necessary to trigger a Trading Pause.

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

EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). The Exchange submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. *See* Securities Exchange Act Release No. 62883 (June 11, 2010), 75 FR 34501 (June 17, 2010) (SR–NYSEAmex–2010–56).

[4] The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and a specified list of Exchange Traded Products ("ETPs"), where applicable, for all equities exchanges and FINRA. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and QQQQ to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. *See* Securities Exchange Act Release No. 63501 (December 9, 2010), 75 FR 78307 (December 15, 2010) (SR–NYSEAmex–2010–117). The Pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. *See* Securities Exchange Act Release No. 64206 (April 6, 2011), 76 FR 20418 (April 12, 2011) (SR–NYSEAmex–2011–23).

[5] Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

[6] The Exchange is not proposing a change to the Threshold Move percentage applicable to securities currently included within the current Pilot. However, the changes proposed herein would require that certain rule text pertaining to the Threshold Move for the existing Pilot securities be reorganized within Rule 80C.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–32. 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 NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–32 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11612 Filed 5–11–11; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64437; File No. SR–BX–2010–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Create a Listing Market on the Exchange

May 6, 2011.

On August 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a listing market on the Exchange, called "The BX Venture Market" ("BX Venture Market"). The proposed rule change was published for comment in the **Federal Register** on September 8, 2010.[3] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.[4] The Commission received three comments in response to the Notice.[5]

On December 6, 2010, the Exchange submitted Amendment No. 1 to the proposed rule change.[6] On December 7, 2010, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[7] The Commission thereafter received eight comments on the proposal.[8] The Exchange submitted a response letter to the comments on February 17, 2011.[9] On March 3, 2011, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[10] On May 4, 2011, the Exchange submitted Amendment No. 2 to 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 ("Notice").

[4] *See* Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010).

[5] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010 ("MSD Letter"); Michael R. Trocchio, Bingham McCutchen LLP, on behalf of Pink OTC Markets Inc., dated October 3, 2010 ("Pink OTC Markets Letter"); and Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010 ("Madrona Letter").

[6] *See* Securities Exchange Act Release No. 63597 (December 22, 2010), 75 FR 82098 (December 29, 2010).

[7] *See* Securities Exchange Act Release No. 63448 (December 7, 2010), 75 FR 77036 (December 10, 2010) ("Order Instituting Proceedings").

[8] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from James J. Angel, Ph.D., CFA, dated January 14, 2011 ("Angel Letter"); K. Richard B. Niehoff, Chairman and CEO, United States OTC Markets, Inc., dated January 20, 2011 ("Niehoff Letter"); Mark G. Heesen, President, National Venture Capital Association, dated January 21, 2011 ("NVCA Letter"); Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization, dated January 24, 2011 ("BIO Letter"); Michael R. Trocchio, Bingham McCutchen LLP, on behalf of OTC Markets Group Inc., dated January 24, 2011 ("OTC Markets Group Letter"); Rey Ramsey, President and CEO, TechNet, dated January 24, 2011 ("TechNet Letter"); William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated January 26, 2011 ("MSD Letter II"); and James McCarthy, Co-Founder, the US Venture Exchange, dated April 19, 2011 ("McCarthy Letter").

[9] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, dated February 17, 2011 ("BX Response Letter").

[10] *See* Securities Exchange Act Release No. 64028 (March 3, 2011), 76 FR 13010 (March 9, 2011).

comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Amendment No. 2 to the Proposed Rule Change

The Exchange proposes to create a listing market, which will be called "the BX Venture Market." Following Commission approval, the Exchange will announce the operational date of the new market in an Equity Trader Alert and press release. The proposed rules will become effective on the operational date.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the acquisition of the former Boston Stock Exchange by The NASDAQ OMX Group, Inc., the Exchange discontinued its listing marketplace and delisted all securities previously listed on the Exchange.[11] Since January 2009, the Exchange has operated as a trading venue only, allowing market participants to trade securities listed on other national securities exchanges pursuant to unlisted trading privileges. The Exchange is proposing to begin listing securities again, through the creation of a new listing market, to be called "The BX Venture Market." The BX Venture Market will have minimal quantitative listing standards, but will have qualitative requirements that are, in many respects, similar to those required for listing on The NASDAQ Stock Market ("NASDAQ") and other national securities exchanges.[12] The Exchange believes that the name BX Venture Market will appropriately convey the lower financial standards required for listing on this market and distinguish the BX Venture Market from other national securities exchanges. The term "venture" is already used to designate the junior market in Canada, the TSX Venture Market. Moreover, "venture" by definition broadly connotes an undertaking involving some uncertainty or risk in return for the hope of profit, rather than referring solely to companies that are backed by venture capital. It is thus a familiar term for a venue designed to provide an attractive alternative to companies being delisted from another national securities exchange for failure to meet quantitative listing standards (including price or other market value measures), as well as smaller companies contemplating an initial exchange listing. The Exchange further believes that the proposed listing venue will provide a transparent, well-regulated marketplace for these companies and their investors.[13]

As discussed in more detail below, the Exchange will operate and regulate the BX Venture Market through regulatory contracts with FINRA and the NASDAQ Stock Market LLC, which will be in place prior to the Market becoming operational. While the Exchange will retain all legal responsibility for and control of the functions performed by these entities, it will leverage FINRA's expertise overseeing the over-the-counter markets, surveillance enhancements provided by the SMARTS Group,[14] and the deep experience of the NASDAQ Listing Qualifications Department to ensure high quality oversight for market activity and listed companies. Moreover, the Exchange has proposed rules to provide a clear signal to investors that a company is listed on the BX Venture Market and to distinguish the BX Venture Market from NASDAQ and other national securities exchanges. These proposed rules also require a rigorous vetting procedure before a company may attain a listing, and heightened scrutiny thereafter of listed Companies. Finally, the Exchange will not launch the BX Venture Market before approval is obtained for an arrangement between the Exchange and FINRA to consolidate and disseminate best quotation and last sale data for BX Venture Market listed securities and that arrangement is operational.[15] All of these matters are discussed more fully below.

Listing Requirements

The BX Venture Market would list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights and Warrants. To be listed on the BX Venture Market, companies will need to meet the following qualitative listing standards, each of which is equivalent to the comparable listing standard of NASDAQ or is derived from the Federal securities laws:

(a) The company must be registered under Section 12(b) of the Act[16] and current in its periodic filings with the Commission and, as a result, subject to the requirements of the Sarbanes-Oxley Act of 2002[17] (proposed Rule 5210(a) and 5210(e));

(b) The company must have a fully independent Audit Committee comprised of at least three members and comply with the requirements of SEC Rule 10A–3, promulgated under the Act[18] (proposed Rule 5605(c));

(c) The company must have independent directors make compensation decisions for executive officers (proposed Rule 5605(d));

(d) The company will be prohibited from taking any corporate action with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of the company's common stock registered pursuant to Section 12 of the Act (proposed Rule 5640);

(e) The company's auditor will be required to be registered with the Public Company Accounting Oversight

[11] *See* Securities Exchange Act Release No. 59265 (January 16, 2009), 74 FR 4790 (January 27, 2009) (approving SR–BSE–2008–36 relating to the delisting of all securities from the Exchange in connection with the Exchange's discontinuation of trading).

[12] The Exchange notes that not all qualitative requirements imposed by other exchanges would be required. *See* Listing Requirements, *infra,* for a full discussion of the proposed quantitative and qualitative requirements for listing on BX.

[13] The Exchange will propose in a separate rule filing changes to the BX Equities Platform to govern trading of, and reporting of transactions in, these listed securities and introducing and modifying market data products to permit dissemination of accurate quotation information and reporting of transactions.

[14] SMARTS Group, a subsidiary of NASDAQ OMX, is a leading technology provider of market surveillance solutions to exchanges and regulators around the world

[15] The Commission notes that its order in Section VI, *infra,* does not contain this condition.

[16] 15 U.S.C. 781(b).

[17] 15 U.S.C. 7201–7266.

[18] 17 CFR 240.10A–3.

Board [19] (proposed Rules 5210(b) and 5250(c)(3));

(f) The company will be required to hold an annual shareholders' meeting and solicit proxies for each shareholders' meeting (proposed Rule 5620);

(g) The company will be required to obtain shareholder approval for the use of equity compensation (proposed Rule 5635);

(h) The company will be required to adopt a code of conduct, applicable to all directors, officers and employees (proposed Rule 5610);

(i) The company will be required to conduct an appropriate review and oversight of all related party transactions, to address potential conflict of interest situations (proposed Rule 5630);

(j) The company will be required to disclose material information through any Regulation FD compliant method (or combination of methods) (proposed Rule 5250(b) and IM–5250–1);

(k) The listed securities must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act [20] (proposed Rules 5210(c) and 5255);

(l) Public "shells" would not be allowed to list (proposed Rule 5103(b)); and

(m) The Exchange will conduct a public interest review of the company and significant persons associated with it (proposed Rules 5205(c) and 5104 and IM–5104–1). A company would not be eligible for listing if any executive officer, director, promoter, or control person was involved in any event described in Item 401(f)(2)–(8) of Regulation S–K that occurred during the prior five years (proposed Rule 5103(a)).

In addition, the BX Venture Market would apply the following quantitative listing standards, set out in proposed Rules 5505 and 5506 (initial listing) and 5550 (continued listing), which are designed to assure a minimum level of trading consistent with a public market for the securities:

(a) 200,000 publicly held shares;

(b) 200 public shareholders, at least 100 of which must be round lot holders for initial listing, and 200 public shareholders for continued listing;

(c) A market value of listed securities of at least $2 million for initial listing and $1 million for continued listing;

(d) Two market makers; and

(e) A minimum initial listing price of $0.25 per share for securities previously listed on a national securities exchange and $1.00 per share for securities not previously listed on a national securities exchange. For continued listing, securities will be required to maintain a minimum $0.25 per share bid price.

Further, with respect to companies not previously listed on a national securities exchange, the BX Venture Market will also require for initial listing that the company have either $1 million stockholders' equity or $5 million total assets, a one year operating history, and a plan to maintain sufficient working capital for the company's planned business for at least twelve months after the first day of listing.

The Exchange would also require that rights and warrants will only be eligible for initial and continued listing if the underlying security is listed on the BX Venture Market or is a covered security, as described in Section 18(b) of the Securities Act of 1933.[21]

The proposed listing standards are designed to allow companies that are being delisted from another national securities exchange for failure to meet that exchange's quantitative listing requirements the opportunity to provide their investors with a better regulated, more transparent trading environment than may otherwise be available in the over-the-counter markets. The Exchange believes that allowing these companies to continue trading on a national securities exchange may enable some institutional investors to continue their ownership stake in the company, which could provide greater stability to the company's shareholder base and possibly avoid forced sales by such investors.[22] The Exchange also believes that the BX Venture Market will provide an opportunity for smaller, private, venture-backed companies to expand their capital financing opportunities and go public, and at the same time, encourage investment in early-stage companies by providing private equity and venture funders with an exit strategy. In addition, companies currently traded over-the-counter could view this market as an aspirational step towards a listing on another national securities exchange. The Exchange believes that the agreement of such companies to comply with the Exchange's corporate governance standards and the application of the Exchange's public interest authority will provide additional protections to their investors than would be available in their present trading venue. Moreover, the Exchange believes that a listing on the BX Venture Market could help such companies raise capital, in turn promoting job creation within the United States. Finally, the Exchange believes that the BX Venture Market will be a more attractive alternative to domestic companies that might otherwise have considered a listing on non-U.S. junior markets, which generally have lower listing requirements.

Investor Protection Provisions

The Exchange recognizes that the listing requirements for the BX Venture Market will be lower than those of the NASDAQ Stock Market and other national securities exchanges, and that the market will, therefore, attract smaller, less liquid companies, which may create higher risks for investors. Mindful of these risks and the Exchange's objective to preserve the quality of and public confidence in its market, the Exchange has adopted rules to preclude investor confusion about BX Venture Market listings. The Exchange will also subject companies and associated individuals to a rigorous review process before approving a listing, and apply heightened regulatory scrutiny to listed Companies.

References to Listing. To avoid investor confusion, the listing rules of the BX Venture Market specify that a BX Venture Market-listed company must refer to its listing as on the BX Venture Market, unless otherwise required by applicable rules or regulations. Staff will review any failure of a company to follow this requirement, and take appropriate action pursuant to the Rule 5800 Series. A company that represents itself as listed on the NASDAQ Stock Market or refers to itself as a NASDAQ listed company will be subject to immediate delisting pursuant to procedures in the Rule 5800 Series.[23] To enforce this prohibition, the Exchange will monitor the press releases issued by a BX Venture Market-listed company [24] and will annually review the company's Web site to determine how the company is referring to its listing.

Similarly, in describing this listing venue, the Exchange will refer to it as the BX Venture Market and not as NASDAQ OMX BX. The Exchange will also prominently include information on its Web site describing the

[19] *See* Section 102 of the Sarbanes-Oxley Act, 15 U.S.C. 7212.

[20] 15 U.S.C. 78q–1.

[21] 15 U.S.C. 77r(b).

[22] Many institutional investors have investment policies that limit their ownership to securities listed on a national securities exchange, or that prohibit the ownership of securities that only are traded in the over-the-counter market.

[23] Proposed Rule 5250(b)(4).

[24] Pursuant to Proposed Rule 5250, which addresses disclosure obligations, a listed company that issues a press release in satisfaction of its disclosure obligations is required to disseminate the press release over a national newswire service acceptable to the Exchange.

differences between the BX Venture Market and other national securities exchanges, including NASDAQ.[25] For example, it will inform users that BX Venture Market-listed stocks are not "blue sky" exempt, are not NMS securities, and are not subject to the trade-through rule, and provide side-by-side comparisons of BX Venture Market and NASDAQ Stock Market features. Marketing materials for the BX Venture Market will also include a prominent disclaimer explaining that the BX Venture Market is separate from, and not a tier of, the NASDAQ Stock Market. Finally, as required by proposed Rule 5106 and discussed in more detail later in this filing, the Exchange will require data vendors to identify when the BX Venture Market is the listing market for a security with a unique market center identifier, so as to clearly differentiate those securities from securities listed on NASDAQ or other exchanges or traded over-the-counter.

Automatic Bars to Listing. Proposed Rule 5103 provides for certain automatic bars to listing. Under that Rule, the Exchange will not approve for listing or allow the continued listing of "shell" Companies.[26] This prohibition is based on concerns that the investors in shell companies are unaware of the ultimate business in which they are investing and that trading in such securities is more susceptible to market manipulation. The Exchange will also decline to list any company, and will delist any listed company, that attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange. Finally, the Exchange will not approve for listing or allow the continued listing of a company if any executive officer, director, promoter, or control person was involved in any event that occurred during the prior five years described under Item 401(f)(2)—(8) of Regulation S–K under the Act. Such events include criminal convictions and pending charges, violations of securities laws, and court or administrative actions barring or limiting the individual from certain security related activities.[27]

To enforce these automatic bars, and to identify other public interest concerns that, while not triggering an automatic bar, may call for the use of the Exchange's discretionary authority to disapprove a listing, the Exchange will engage in a rigorous review of listing applications, which will include background checks of individuals associated with the company and the assistance of independent qualified third-party investigators.

Application and Public Interest Review. The listing application will require provision to the Exchange, and Staff review, of all reports and documents required to be filed with the Commission or other regulatory authority, as well as any other information or documentation, public or non-public, Staff determines is necessary for its review. Companies must also provide detailed descriptions and supporting documentation of all pending or prior inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings involving the company, its executive officers, directors, promoters, and ten percent or greater shareholders of the company.[28] The company must, in addition, disclose any events described under Item 401(f) of Regulation S–K involving officers, directors, promoters, or control persons; describe all bridge financings, shelf registrations, Regulation S offerings or private placements consummated in the prior six months; and provide copies of any blue sky memoranda.

Staff will also review the company's proxy disclosures to screen for events described pursuant to Item 401(f) of Regulation S–K under the Act. Moreover, it will conduct background checks of the company and affiliated individuals. This background investigation will be conducted by Staff members experienced in such reviews and will make use of public databases and other resources, such as Lexis-Nexis, the Web-CRD regulatory database, and web-based search engines, such as Google.[29] Finally, the Exchange will request review of a company by an independent qualified third-party investigative firm in appropriate circumstances, as discussed in more detail below.

If the Exchange identifies a regulatory issue that triggers an automatic bar the application will be disapproved. If the Exchange identifies a regulatory event described pursuant to Item 401(f)(2)–(8) of Regulation S–K about an officer, director, promoter, or control person that occurred more than five years prior; or a history of regulatory misconduct by a person that is not an officer, director, promoter, or control person of the company but who has significant influence on or importance to the company, it will ordinarily exercise its discretionary authority to deny listing. However, if the Exchange determines that the information identified may not rise to the level requiring denial of the listing, or if it identifies any issue that raises potential public interest concerns about which it seeks additional information (such as, for example, media accounts of criminal allegations or improper business practices, or any indication of financial improprieties) it will refer the company to an independent qualified third party investigative firm for review. Any decision to list a company that has been referred to an independent investigative review based on the regulatory history of an associated individual that does not trigger an automatic bar, must be approved in writing by the Chief Regulatory Officer ("CRO") of the Exchange. The CRO must also approve the listing of any company with an officer, director, promoter, or control person who has described a bankruptcy under Item 401(f)(1) of Regulation S–K. Finally, whenever Staff has identified a past violation or evasion of a corporate governance standard pursuant to its review of a formerly exchange-listed company's past corporate governance activities, but decides not to exercise its discretionary authority to deny listing, the listing must be approved in writing by the CRO. Documentation of the CRO's approvals will be maintained with the Exchange's listing file for the company.

Independent Investigative Assistance. The Exchange will retain a qualified independent third party investigative firm to assist in its public interest review process. Staff will make random, regular referrals to such a firm of at least 10% of applicant companies that were not previously listed on a national securities exchange.[30] In addition, Staff

[25] Rule 5106.

[26] Proposed Rule 5103(b) sets forth a number of factors that the Exchange will consider in determining whether a Company is a shell, including whether the Company is considered a "shell company" as defined in Rule 12b–2 under the Act, 17 CFR 240.12b–2.

[27] If a listed Company discloses an event involving an executive officer, director, promoter, or control person described under Item 401(f)(2)–(8) of Regulation S–K, the Exchange would provide the Company with thirty days to remove the executive officer, director, promoter, or control person. If the Company does not do so, the Exchange would send a delisting notification to the Company.

[28] A ten year history of such inquiries, investigations, and proceedings involving the company will be required; there is no time limit on the history required for executive officers, directors, promoters, or controlling shareholders.

[29] Proposed Rule 5205(c)(1).

[30] Proposed Rule 5205(d). While the Exchange expects to refer between 10–20% of such applicant companies, this ratio could change upon evaluation of the findings provided by the investigative firms. The Exchange does not expect that random referrals of companies that have previously been listed on a national securities exchange will be necessary, but

Continued

will utilize an investigative firm when it would be impractical to research a regulatory history occurring outside the United States. Finally, Staff will seek review of a company when its internal review has uncovered a regulatory issue or potential public interest concern that does not trigger an automatic bar and Staff has not made a determination to disapprove the application. While the scope of investigations will vary based on the reasons for review, they generally will focus on criminal history, government sanctions and watchlists, and will also include online and onsite checks of court records, searches of relevant state and country criminal databases, and searches of global risk compliance databases covering government prohibited and barred persons. In appropriate circumstances, such as where questions are raised related to the legitimacy or appropriateness of an applicant's business practices, customers, or suppliers, whether through whistle blower complaints or otherwise, the outside firm would be asked to make inquiries with respect to those matters.

These procedures and determinations shall be followed, as applicable, whenever a listed company names a new officer, director, promoter, or control person or describes an event pursuant to Item 401(f) of Regulation S–K under the Act, and whenever Staff, in the course of its on-going monitoring of listed Companies, identifies a potential public interest concern. These background procedures would also apply when a listed company combines or reverse-merges with a non-listed entity, resulting in a "change of control" transaction pursuant to Listing Rule 5110.[31]

Oversight of Listings and Delistings

Pursuant to an intercompany regulatory services agreement that will be in place before the BX Venture Market is operational, Staff in NASDAQ's Listing Qualifications Department will be responsible for processing listings, conducting on-going compliance monitoring of listed companies, and implementing delistings. Notwithstanding the contractual arrangement, the Exchange retains ultimate legal responsibility for, and control of, these functions. The NASDAQ Listing Qualifications Department is presently comprised of 33 individuals, which include 13 continued listing analysts, four initial listing analysts, and an investigations group. This Staff is extremely experienced in regulatory analysis: the average person has over ten years of experience at NASDAQ and several have extensive backgrounds outside NASDAQ in investigating alleged violations of the Federal securities laws. The sophisticated technology used by this Department enables Staff to efficiently review public filings and identify and prioritize issues that may raise concerns under the listing standards, including public interest concerns. Among other things, this system is programmed to identify any quantitative deficiencies arising from the filings or from trading data, immediately notify the appropriate Staff, and keep an auditable record of how Staff treated the deficiency.

The proposed rules require, moreover, that the listing process will at all times be supervised by at least one person with substantial prior experience supervising such a program at a national securities exchange with a currently active listing program. The head of the Exchange's Listing Department, who will have no marketing responsibilities and will report to NASDAQ OMX's Chief Regulatory Officer, will be involved in all decisions concerning whether to permit or deny listing to a company based on a public interest concern. In addition, the investigations group must be supervised by at least one person with substantial prior regulatory experience at another national securities exchange or with an organization, such as the SEC's Enforcement Division or FINRA, which has securities-related enforcement responsibilities. Finally, the Exchange's Chief Regulatory Officer will be required to have had substantial prior regulatory experience with a national securities exchange or equivalent experience.[32] This person will be required to approve the listing of any company where potential regulatory concerns have been identified, including cases where the company has disclosed information about an executive officer, director, promoter, or control person involving an event described under Item 401(f) of Regulation S–K that does not trigger the automatic bar described above.[33]

Should the workload resulting from the new BX Venture Market prove sufficiently high, the Exchange and NASDAQ have each committed to hiring additional staff, as necessary. In that regard, the staffing within Listing Qualifications is now, and will continue to be, reviewed regularly by NASDAQ's Chief Regulatory Officer and Regulatory Oversight Committee and will also be reviewed by the Exchange's Regulatory Oversight Committee.

Quantitative Listing Standards

The Exchange proposes that any company that meets the quantitative (e.g., financial) requirements for listing on NASDAQ will not be approved for listing on the BX Venture Market. This will assure that such companies only become listed on the exchange with higher listing standards.

Given that the Exchange expects to list companies that do not meet the quantitative listing requirements of the primary existing national securities exchanges, it is expected that BX Venture Market-listed companies will include smaller companies and companies facing business or other challenges. Thus, the proposed quantitative standards for the BX Venture Market were deliberately structured to be lower than those of the other primary exchanges. In that regard, the minimum price requirement for listing on the BX Venture Market will be $0.25 per share for a security previously listed on another national securities exchange and $1.00 per share for a security previously quoted in the over-the-counter market or listing in connection with its initial public offering. Until September 30, 2011, the Exchange would consider any company that was listed on another national securities exchange at any time since January 1, 2010, to be eligible to list with a $0.25 per share price. The Exchange believes it appropriate to consider a company delisted since January 1, 2010, as previously listed on another national securities exchange because the BX Venture Market would not have been available to such companies when they were delisted. A number of companies were delisted during 2010 as a result of difficulties arising from the financial crisis and this look-back will also allow these companies, which may have recovered but not yet meet the initial listing requirements of another exchange, to list on the BX Venture Market. Furthermore, the Exchange believes it is appropriate to continue this treatment until September 30, 2011, to assure that such companies have an adequate opportunity to learn about the BX

will reevaluate that assumption on an on-going basis.

[31] If a listed Company combines or reverse merges with a non-listed entity, resulting in a change of control, the post-merger company must apply for and meet all initial listing requirements before listing on the Exchange. Delisting proceedings will be initiated if an application for listing of the new entity has not been approved before consummation of the transaction. Rule 5110 includes a non-exclusive list of considerations to be used for determining whether a change of control has occurred.

[32] Proposed Rule 5102.

[33] Proposed IM 5104–1.

Venture Market and sufficient time to complete their application and have that application processed by the Exchange. After September 30, 2011, a company will be considered to have been previously listed on a national securities exchange, and therefore eligible to list with a $0.25 per share price, only if it was listed on such an exchange at any time during the three months prior to its listing on the BX Venture Market. The Exchange believes that this three month period will allow the company sufficient time to apply for listing on the BX Venture Market and have its application processed.

For continued listing, a security will be required to maintain a minimum $0.25 per share bid price.[34] If the security does not maintain a minimum $0.25 per share bid price for 20 consecutive trading days, Exchange Staff would issue a Staff Delisting Determination and the security would be suspended from trading on the BX Venture Market.[35] A company could appeal that determination to a Hearings Panel, however such an appeal would not stay the suspension of the security.[36] During the Hearings Panel process, the security could regain compliance by achieving a $0.25 per share minimum bid price while trading on another venue, such as the over-the-counter market, for ten consecutive days. However, if the company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement in the prior 12 months, the company could only regain compliance by achieving a closing bid price of $0.25 per share or more for at least 20 consecutive trading days. The Exchange believes that this higher requirement for companies that were previously non-compliant is appropriate to reduce the likelihood of future instances of non-compliance and the concomitant investor confusion concerning the ability of the company to remain listed. If the Hearings Panel determines that the security has satisfied the applicable standard to regain compliance, the trading halt would be terminated and the security would resume trading on the Exchange.

To be eligible for initial listing, a company not previously listed on a national securities exchange must have at least a one year operating history, a minimum of either $1 million in stockholders' equity or $5 million in total assets, and demonstrate that it has a plan to maintain sufficient working capital for its business for at least twelve months after the first day of listing. The Exchange believes that these requirements will help assure that a company that was not previously subject to exchange regulation nonetheless has a credible and sustainable business.

The Exchange believes that the proposed public float, holder and market maker requirements, together with the minimum market value of listed securities requirement, will assure sufficient liquidity in listed securities. In that regard, the Exchange notes that the shareholder and publicly held shares requirements are comparable to, or higher than, requirements for listing a preferred stock or secondary class of common stock on the NASDAQ Capital Market, which require 100 round lot shareholders and 200,000 publicly held shares. The Exchange is not aware of any difficulties in the trading in securities meeting these requirements. Further, requiring two market makers will assure competing quotations for potential buyers and sellers of the securities listed on the BX Venture Market. Finally, the Exchange believes that the minimum market value of listed securities requirement will help assure that the company issuing the securities is of a sufficient size to generate interest from investors and market participants. While these proposed standards may be lower than those of other exchanges, investors will be protected by the fact that securities listed on the BX Venture Market would be considered penny stocks under Exchange Act Rule 3a51–1, unless they qualify for an exemption from the definition of a penny stock.[37] As such, broker-dealers would be required to pre-approve their customers for trading in penny stocks and investors will obtain the disclosures required to be made by broker-dealers in connection with penny stock transactions, providing them with trade and market information prior to effecting a transaction. Further, there will be no "blue sky" exemption available under Section 18 of the Securities Act of 1933,[38] so companies will be required to satisfy state law registration requirements and other state laws that regulate the sale and offering of securities. Because some state laws and regulations may provide an exemption from certain registration or "blue sky" requirements for companies listed on the former Boston Stock Exchange, based on the higher listing standards previously applied by that Exchange, proposed Rule 5103(c) would provide that the Exchange will take action to delist any company listed on the BX Venture Market that attempts to rely on such an exemption.[39] Companies will also agree not to rely on any such exemption as a provision of the BX Venture Market Listing Agreement. Listed companies will be required to represent to the Exchange that they are not relying on any such exemption in connection with any securities offering and will be required to provide the Exchange with copies of any "blue sky memoranda" prepared in connection with the issuance of shares.[40] These steps will allow the Exchange to assure that the company is not inappropriately relying on such an exemption.

Qualitative Listing Standards

The BX Venture Market corporate governance requirements are generally comparable to those of the other exchanges. The Exchange would require that a listed company have an audit committee comprised of at least three independent directors that also meet the requirements of SEC Rule 10A–3.[41] For a director to be considered an independent director, the company's board would have to determine that the individual does not have a relationship which, in the board's opinion, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.[42] The board would be precluded from finding a director independent based on certain relationships, including if that director

[34] The Exchange notes there is also no price requirement for initial or continued listing on the National Stock Exchange or for continued listing on NYSE Amex and therefore that the proposed continued listing requirement exceeds the requirement of those exchanges.

[35] Proposed Rule 4120(a)(12).

[36] Proposed Rule 5815(a)(1)(C).

[37] 17 CFR 240.3a51–1. The Exchange is not seeking an exemption from the penny stock rules for securities listed on BX, however a security may be excluded from the definition of a penny stock as a result of the security having a price in excess of $5 or its issuer having net tangible assets in excess of $2 million (if the issuer has been in continuous operation for at least three years) or $5 million (if the issuer has been in continuous operation for less than three years) or average revenue of at least $6 million for the last three years. Rule 3a51–1(d) and (g), 17 CFR 240.3a51–1(d) and (g).

[38] 15 U.S.C. 77r.

[39] The Exchange notes that the Massachusetts Securities Division has requested comment on a proposed change to its regulations to eliminate its exemption from the registration requirement for securities listed on the BX Venture Market. *See http://www.sec.state.ma.us/sct/sctnewregs/newregsidx.htm#hearing.*

[40] Proposed Rule 5250(e)(7). The Exchange has proposed to add these requirements in response to comments submitted on the original proposal.

[41] 17 CFR 240.10A–3. *See* proposed Rule 5605(c)(2). Companies may be eligible for a phase-in or cure period with respect to certain of these requirements.

[42] Proposed Rule 5605(a)(2) and IM–5605–1. The proposed definition of an independent director is identical to NASDAQ's definition of an independent director.

is currently an employee of the company or was employed by the company during the prior three years (including as an executive officer), accepted certain compensation or payments from the company during the prior three years, or had a family member with certain affiliations with the company.[43]

The audit committee would be required to have a charter setting out its responsibilities, including the committee's purpose of overseeing the accounting and financial reporting processes of the company and the audits of the company's financial statements and the responsibilities and authority necessary to comply with SEC Rule 10A–3.[44] The audit committee, or another independent body of the board, will also be required to conduct an appropriate review and oversight of any related party transaction.[45] The Exchange believes that this requirement will limit the potential for self-dealing in connection with any related party transactions.

The Exchange would also require that independent directors make compensation decisions concerning the chief executive officer and other executive officers.[46] Independent directors would be required to meet on a regular basis in executive sessions.[47] These requirements for audit committees, compensation decisions, and executive sessions are identical to those of NASDAQ and substantially similar to those of the other national securities exchanges and the Exchange believes they will serve to empower the independent directors of its listed companies.

While the Exchange would require that a listed company have at least three independent directors to satisfy the audit committee requirement described above, it would not require that a majority of the company's board of directors be independent or an independent nomination committee because the Exchange believes those requirements could impose significant additional costs on these smaller companies and therefore discourage companies from pursuing an otherwise beneficial listing. In that regard, given the significant responsibilities imposed on audit and compensation committee members, directors who serve on these committees are sometimes reluctant to serve on other committees. As such, if the BX Venture Market were to also require an independent nominations committee, companies may have to increase the size of their boards and add additional independent directors. Similarly, requiring that independent directors comprise a majority of a company's board could also require companies to add additional independent directors. In each case, the need to add independent directors would impose additional costs on the company.[48] Moreover, nothing in the Commission's rules or the Act mandate these requirements.[49] However, the Exchange believes that the requirement for executive sessions of the independent directors will provide a forum for the independent directors to consider whether the governance structure of the company is appropriate and raise any concerns, notwithstanding the lack of a majority independence and nominations committee requirement.

Companies listing on the BX Venture Market will be permitted to phase in compliance with the audit committee and compensation committee requirements following their listing. With respect to the audit committee requirements, a company listing in connection with its initial public offering would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of the date of effectiveness of the company's registration statement; and all independent members within one year of the date of effectiveness of the company's registration statement. For this purpose, a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A–3(b)(1)(iv)(A), namely that the company was not, immediately prior to the effective date of its registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

With respect to the compensation committee requirement, a company listing in connection with its initial public offering, upon emerging from bankruptcy, or that otherwise was not subject to a substantially similar requirement prior to listing (such as a company only traded in the over-the-counter market) would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of listing; and all independent members within one year of listing. For this purpose, a company will be considered to be listing in conjunction with an initial public offering if immediately prior to listing it does not have a class of common stock registered under the Act.

A company that transfers to the BX Venture Market from another national securities exchange with a substantially similar requirement will be immediately subject to the audit and compensation committee requirements, provided that the company will be afforded the balance of any grace period afforded by the other market.

The Exchange will require companies to adopt a code of conduct applicable to all directors, officers and employees.[50] Any waivers of the code for directors or executive officers must be approved by the board and disclosed. The Exchange believes that this requirement will help promote the ethical behavior of individuals associated with companies listed on the BX Venture Market.

In addition, the Exchange will require shareholder approval when a company adopts or materially amends a stock option or purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants.[51] The Exchange would not require shareholder approval for other share issuances, however, given that the companies expected to list on the Exchange may have a greater need to issue shares more frequently or more quickly, due to their expected smaller size and the business challenges they may be facing. As such, the Exchange believes that the cost and delay associated with seeking approval for share issuances would discourage companies from pursuing an otherwise

[43] *Id.*

[44] Proposed Rule 5605(c)(1).

[45] Proposed Rule 5630.

[46] Proposed Rule 5605(d) and IM–5605–6. A company can satisfy this requirement by having their independent directors make these decisions in executive session, or by having independent directors sit on a compensation committee. If the company chooses to use a compensation committee and the committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee under exceptional and limited circumstances, provided the company makes appropriate disclosure. Of course the Exchange will adopt rules required by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act following the necessary SEC rulemaking related to that provision. *See* Listing Standards for Compensation Committees, Release No. 33–9199 (April 6, 2011) (76 FR 18966).

[47] Proposed Rule 5605(b).

[48] The 2008–2009 Director Compensation Report prepared by the National Association of Corporate Directors (available from *http://www.nacdonline.org/*) found that the median total direct compensation per director was $78,060 for smaller companies (defined as companies with annual revenues of $50 to $500 million).

[49] *See, e.g.,* Item 407(a) of Regulation S–K, which requires disclosure of non-independent directors who serve on nomination committees, implicitly allowing such service.

[50] Proposed Rule 5610.

[51] Proposed Rule 5635.

beneficial listing.[52] Nonetheless, the Exchange will require listed Companies to provide notice of any 5% change in its shares outstanding and any capital raising transactions,[53] and the Exchange Staff will review such issuances for public interest concerns, such as issuances significantly below the market price or for the benefit of related parties.

Appeal Process

Companies denied initial listing or delisted by the Exchange would be afforded an appeal process similar to that contained in the existing Rule 4800 Series of the Exchange's rules, which was modeled on the process available to companies listed on NASDAQ.[54] The Exchange's Listing Qualifications Staff only will be able to allow time-limited exceptions for certain deficiencies from the continued listing standards, such as the failure to file periodic reports, certain of the corporate governance requirements and any quantitative deficiency which does not contain a compliance period.[55] Other of the continued listing requirements would provide for automatic compliance periods, including the market maker, market value of listed securities, and audit committee requirements, and a determination that an officer, director, promoter, or control person of a company was involved in any event that occurred during the prior five years described in Item 401(f)(2)–(8) of Regulation S–K under the Act.[56] If the company fails to timely solicit proxies or hold its annual meeting or fails to meet the minimum price requirement, or if Staff has public interest concerns in connection with the company, or if a company represents itself as listed on the NASDAQ Stock Market or refers to itself as a NASDAQ listed-company, or attempts to rely on an exemption from state securities registration that otherwise may be available under state law to companies listed on the Exchange, the Listing Qualifications Staff will issue an immediate delisting letter to the company.[57] Any other deficiency would result in the Listing Qualifications Staff issuing a Public Reprimand Letter or a delisting notification.[58] Hearings Panels composed of individuals not affiliated with the Exchange would be permitted to grant additional, but limited time to companies that received a delisting notification, or to reverse a denial of initial listing. A company could appeal a decision of the Hearings Panel to the Listing and Hearing Review Council, which is a committee appointed by the Exchange's Board to act for the Board with respect to listing decisions.[59] The Listing and Hearing Review Council decision would be final, unless it is called for a discretionary review by the Exchange Board. The compliance periods and discretion to allow a non-compliant company to remain listed are generally shorter on the BX Venture Exchange than would be allowed an equivalent company listed on NASDAQ. For example, a Hearings Panel would only be permitted to grant 90 calendar days for a company to regain compliance with a listing standard, instead of the 180 calendar days available on NASDAQ. Similarly, a company that falls below the market value of listed securities requirement would be provided a 90 calendar day compliance period, instead of the 180 days available to a NASDAQ company.

Oversight of Market Activity

The Exchange represents that it will have in place before the BX Venture Market is operational a contractual arrangement with FINRA to regulate market activity on the BX Venture Market, as it does today for NASDAQ. FINRA's oversight will include review of trading that takes place on the over-the-counter market in securities listed on the BX Venture Market. Based on its breadth of experience overseeing the over-the-counter markets and advanced technology, FINRA will implement electronic surveillance patterns designed to detect a wide range of potential issues, including, for example, insider trading, front-running, fraud, auto-execution manipulation, mid-point cross manipulation, wash sales, layering, open/close marking, and Reg SHO clearing fails. FINRA intends to revise a number of its existing automated surveillance patterns to incorporate NASDAQ OMX BX trading activity and over-the-counter trading activity in issues eligible for trading on The BX Venture Market, and will develop and implement specific automated surveillance patterns to address any rule and functionality changes resulting from The BX Venture Market initiative. FINRA will enhance its review process by calibrating surveillance patterns to detect potential issues that may arise particularly in low priced, less liquid stocks. In addition, the Exchange and FINRA will leverage the expertise of SMARTS Group, a leading technology provider of market surveillance solutions to exchanges and regulators around the world,[60] in creating a new suite of quoting and trading patterns to detect suspicious activity in low priced and less widely traded securities. Further, FINRA will review the activity of firms on the BX Venture Market when conducting their reviews of these firms. This review will include "focused exams" concentrated on sales practices and firm oversight. The review will include any other activities required to effectively regulate the Market.

The Exchange represents that an agreement with FINRA for these activities will be in place before the BX Venture Market begins operations. Notwithstanding the contractual arrangement with FINRA, the Exchange retains ultimate legal responsibility for and control of all regulatory functions for the Exchange.

The Exchange will monitor real-time trading of securities listed on the BX Venture Market, and plans to implement a broad suite of realtime surveillance patterns and functional analysis tools based on the most up-to-date technology solution, SMARTS.

The Exchange will provide a monthly report to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections and Examinations describing any significant developments on the BX Venture Market, including companies added or removed from the market during that period. In addition, the Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter. The Exchange will also provide copies of the Listing Department's procedures manuals and surveillance procedures used by FINRA and the Exchange to the Commission's Office of Compliance, Inspections and Examinations. Finally, before the BX Venture Market is operational, the Exchange will represent, in a letter to the Staff in the Commission's Office of Compliance Inspections and Examinations, that it and FINRA have adequate regulatory procedures and programs in place to effectively regulate the BX Venture Market and its listing

[52] In this regard, the proposed rules are comparable to the rules of the National Stock Exchange, which require shareholder approval for equity compensation issuances but not for other share issuances. *See* National Stock Exchange Rule 15.6.

[53] Proposed Rules 5250(e)(1) and (e)(7).

[54] Nasdaq Listing Rules 5800–5899.

[55] Proposed Rule 5810(c)(2).

[56] Proposed Rule 5810(c)(3).

[57] Proposed Rule 5810(c)(1).

[58] Proposed Rule 5810(c).

[59] Section 6.1 of the By-Laws on NASDAQ OMX BX, Inc.

[60] SMARTS Group is a subsidiary of NASDAQ OMX.

program, and adequate procedures and programs in place to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems.

Market Data

The Exchange has committed to broad dissemination of quotation and last sale information about BX Venture Market listed securities to ensure that public investors and all market participants have all the information needed to make informed investing and trading decisions. Information about securities listed on the BX Venture Market will be disseminated via several mechanisms. First, BX Venture Market listed securities will have real-time consolidated market data for both quotes and trades consistent with that provided by the network processors for national market system securities. The Exchange notes that operation of the BX Venture Market will be conditioned by the Commission upon approval and operation of an arrangement by the Exchange and FINRA to consolidate and disseminate the best quotation and last sale data for BX Venture Market listed securities that is made available by BX and FINRA.[61] The consolidated market data for BX Venture Market listed securities will be made available at no charge for the foreseeable future.[62] Second, the Exchange will disseminate real-time last sale data, tick-by-tick details, and best bid and offer quotations and trade data from the BX execution system.[63]

Market data regarding BX Venture Market listed securities will be disseminated in a manner that facilitates adoption and use of the new data provided, in that the Exchange will ensure ease and efficiency for market data vendors and potential recipients. Specifically, consolidated data will leverage the widespread distribution network and administrative operations that the Exchange already employs including existing market data contracts, connectivity ports, transmission lines, network operations, data message specifications, billing and auditing. By leveraging existing data technology and administration, data regarding BX Venture Market listed securities will become instantly available through hundreds of market data distributors reaching an audience of millions of potential users via multiple distribution channels.

Further, the Exchange is committed to ensuring that BX Venture Market securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on those data products and to end-users of the data. To that end, all market data for BX Venture Market securities will include a unique data identifier in the "Market Center" field to distinguish the security from those listed on other exchanges and the over-the-counter markets. This Market Center identifier is already utilized by the Exchange and network processors on every consolidated and proprietary data feed supplied by the network processors and by NASDAQ and other national securities exchanges. The Market Center identifier is utilized by the network processors to demarcate, for example, NASDAQ ("Q"), NYSE ("N"), Amex ("A"), Arca ("P"), and OTC stocks. BX Venture Market listed securities would be identified with its own unique Market Center identifier "B" on any new BX consolidated data feeds and in the BX Venture Market Daily List data product.[64] The Daily List data product will be adopted through an amendment to Rule 7022 in a separate filing with the Commission.

The Exchange will require market data distributors, through distribution agreements and by amendments to its global data policy document to prominently identify the BX Venture Market as the listing market, and, where the display of text is not consistent with the display methodology or user needs of the distributor, to use the Market Center identifier "B" to prominently display the listing market with quotation and last sale information for BX Venture Market-listed securities. Every market data vendor that distributes BX Venture Market data to users must sign a data distribution agreement. These agreements bind the data vendor to abide by the terms and conditions of data purchase and usage, including conditions governing data display within the global data policy document. The requirement to prominently display the listing market will be a legal obligation backed by contractual sanctions including termination of the distribution agreement. These agreements have been used effectively in the past to require the display of key data elements to customers. The Exchange represents that these agreements will be in place before the BX Venture Market begins operations, and that the Market Center identifier will be distributed and required to be displayed upon the launch of the market.

Market data distributors and data users, including retail investors, are already familiar with this approach. Data distributors such as Bloomberg and Thompson Reuters, Internet portals such as Google and Yahoo, mutual fund complexes and brokers such as Vanguard, Schwab, and E*Trade, all currently use Market Center identifiers to understand where a security is listed and display that information on their Web sites and portals, typically next to the company name. For example, on Yahoo's Web site, "NasdaqGS" is currently displayed next to the name of all companies listed on The NASDAQ Global Select Market; that display would read, for BX Venture Market companies, "BX Venture" or "BX Venture Market." The requirement that the Market Center identifier for BX Venture Market listed securities be prominently displayed by all of these market participants will mean that investors viewing a quotation or last sale report will be able to clearly distinguish a stock listed on the BX Venture Market from those listed on NASDAQ or other markets.

The Exchange will, in connection with the launch of the BX Venture Market, proactively review the displays of prominent data distributors and require immediate compliance if they fail to meet the requirements of the market data agreements. Following the launch of the BX Venture Market, the Exchange will conduct periodic audits of all market data vendors to ensure compliance. If a market data vendor does not satisfy the Exchange's display requirements, the Exchange will take action against the vendor, up to and including terminating the vendor's ability to receive data from the Exchange. The Exchange is committed to working with market participants and the Commission to evaluate, on an on-going basis, whether this display requirement is effective in distinguishing BX Venture Market-listed securities from other national exchange-listed securities in order to reduce investor confusion.

Symbology

The assignment of symbols for companies listed on the BX Venture

[61] The Commission notes that its order in Section VI, *infra,* does not contain this condition.

[62] The Exchange will, as always, be required to file a proposed rule change in order to assess a fee for this data in the future.

[63] BX Last Sale provides real-time last sale data from the BX execution systems. BX TotalView provides tick-by-tick details for all displayable orders in the BX Execution systems, and BX Basic provides best bid and offer quotations and trade data from the BX execution system.

[64] At the request of Commission staff, the Exchange assessed the feasibility of adopting a multi-character market center identifier, and it concluded that this proposal is infeasible. Single-character market center identifiers are hard-coded into a worldwide network of market data distributors and cannot be modified. The Exchange also investigated without success adopting other options including root symbol modifiers and lengthy security symbols.

Market will be governed by the existing National Market System Plan for the Selection and Reservation of Securities Symbols, which is the exclusive means of allocating and using trading symbols. Pursuant to that Plan, securities listed on the BX Venture Market, like every other national securities exchange today, are eligible to have a trading symbol of one to five characters. This eligibility is important because the BX Venture Market is intended to afford a listing venue for companies formerly listed on other national securities exchanges, which will want to retain their symbols.[65] In approving the symbology Plan, the Commission distinguished securities listed on an exchange, which can trade with a symbol of one to five characters, from those trading over the counter, which can trade only with a four or five character symbol, noting that "[e]xchange listing standards are approved by the Commission and must include corporate governance requirements that comply with Rule 10A–3 under the Exchange [sic] Act. Issuers traded on over-the-counter equity venues (including the OTCBB and Pink Sheets) are not subject to such listing standards."[66]

Although all BX Venture Market listed companies are subject to listing standards approved by the Commission, and must meet corporate governance requirements similar to those required for listing on other national securities exchanges, the Exchange will require Companies not previously listed on a national securities exchange to adopt a four or five character ticker symbol as a prerequisite to listing on the BX Venture Market. Companies that list on the BX Venture Market following a delisting from another national securities exchange and that traded on that exchange with a one, two, or three character ticker symbol, will be permitted to retain their ticker symbol when listing on the BX Venture Market, provided that the company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8–K.[67]

Fees

Companies would be required to submit an application review fee of $7,500 with their application for listing on the BX Venture Market, and would be required to pay a $15,000 annual fee for the first class listed on the Exchange and $5,000 for each additional class. The annual fee would be pro-rated for a company's first year of their listing. The application review fee will allow the Exchange to recover some of the costs associated with the initial review of the company's application, including staff time and the systems supporting the initial review process. The annual fee would similarly offset the staff and system costs of continued monitoring of the company. The proposed application and annual fees are substantially less than those charged by other national securities exchanges.[68] Companies that were previously listed on NASDAQ would receive a credit, which can only be used to offset the annual fee, for any annual fees paid to NASDAQ during the same calendar year that they initially list on the BX Venture Market, for the months following their delisting from NASDAQ. The Exchange believes this credit is a reasonable allocation of fees under the Act because it will avoid a double charge of a company that has paid NASDAQ a non-refundable fee to provide similar services as those that will be provided by the Exchange under its annual fee. As such, the Exchange believes it would be inequitable to charge the company a second fee in the same year to support the provision of those services. Companies eligible for a credit would of course undergo the same rigorous initial listing application process to which all companies seeking a listing on the Exchange are subject.

Fees would also be assessed for certain one-time events, such as a $7,500 fee for substitution listing events, a $2,500 fee for record-keeping changes, and a $4,000 or $5,000 fee for a written or oral hearing, respectively. These fees are identical to those charged on NASDAQ and are designed to recoup the costs of making changes to the Exchange's systems and distributing those changes to market data users.

Under Proposed Rule 5602, a company considering a specific action or transaction can request an interpretation from the Exchange, and in return, the Exchange will prepare a responsive letter as to how the rules apply to the proposed action or transaction. No company is required to request an interpretation, and Staff will orally discuss the application of the Exchange's rules with companies without any additional charge. However, if the company seeks a written response, the Exchange proposes to charge a $15,000 fee to recoup the cost of Staff's time in reviewing and responding to the request.[69] The Exchange believes that the fee is appropriate, as the written response is applicable only to the company that requests it. The Exchange also believes that the written interpretive process, and the associated fee, will provide an additional public benefit in that Staff will prepare anonymous summaries of interpretations, as well as frequently asked questions based on requests received from companies, including those withdrawn before a written response is issued. These summaries and questions will be posted on the Exchange's Web site so that the general public, practitioners, and other companies can better understand how the Exchange applies its rules and policies. In this way, the overall need to request such interpretations is minimized, thus reducing burdens on companies and Staff alike.

Other Changes

As part of the proposed rule change, the Exchange is deleting portions of the Rule 4000 Series related to the listing and trading of securities eligible to be listed on the BX Venture Market and correcting cross-references to those deleted sections. The Exchange is maintaining those provisions of the Rule 4000 Series applicable to securities that will not be eligible to be listed on the BX Venture Market, such as Portfolio Depository Receipts, Index Fund Shares,

[65] The Commission found that allowing all exchanges to utilize from one to five characters minimizes investor confusion when a company changes its listing from one venue to another. Securities Exchange Act Release No. 58904 (November 6, 2008), 73 FR 67218 at 67227 (November 13, 2008) ("The Commission finds that allowing the automatic portability of a symbol in the event that an issuer transfers its listing to another exchange will further the purposes of the Act and should reduce investor confusion by allowing the symbol already associated with the issuer to continue to be used by the issuer on the new exchange."). The Commission also noted that the portability feature of the plan would promote "competition among listing markets, *including potential new listing markets*." *Id.* at 67224 (emphasis added).

[66] *Id.* at 67225 (footnotes omitted). The Exchange notes that it will have listing standards approved by the Commission, including corporate governance requirements that comply with Rule 10A–3, and go far beyond those requirements.

[67] Proposed Rule 5210(j).

[68] For example, the initial listing fees for listing common stock on the NASDAQ Capital Market range from $50,000 to $75,000 and the annual fees are $27,500; the initial listing fees for listing common stock on NYSE Amex range from $50,000 to $70,000 and the annual fees range from $27,500 to $40,000; the initial listing fees for listing common stock on the New York Stock Exchange range from $150,000 to $250,000 and the annual fees range from $38,000 to $500,000. *See* Nasdaq Rule 5920(a)(1) and (c)(1)(A), NYSE Amex Listed Company Guide Sections 140 and 141, and NYSE Listed Company Manual 902.03.

[69] No fee would be charged in connection with requests involving a company's initial listing application given that the company will pay an application fee.

Trust Issued Receipts, Securities Linked to the Performance of Indexes and Commodities, and Managed Fund Shares, to enable the continued trading of such securities on the Exchange pursuant to unlisted trading privileges.

The Exchange is deleting Rule 4430, which provided listing criteria for limited partnership rollup transactions using language that was substantially similar to language contained in FINRA Rule 2310. Instead, the Exchange addresses these issues in proposed Rule 5210(h). This rule adopts the same approach taken by NASDAQ and NYSE AMEX by incorporating the FINRA rule by reference.[70] In this manner, the Exchange satisfies the requirement of Section 6(b)(9) of the Act,[71] which requires that the rules of a national securities exchange prohibit certain limited partnership rollup transactions.

The Exchange is also moving the additional requirements applicable to the listing of securities issued by NASDAQ OMX or its affiliates from Rule 4370 to Rule 5701.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[72] in general and with Section 6(b)(5) of the Act,[73] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed new listing venue will advance these goals by allowing qualified issuers to list on a transparent, well-regulated marketplace with increased transparency about the trading of these securities, thereby protecting investors and the public interest and helping to prevent fraudulent and manipulative acts and practices.

In addition, the Exchange believes that the proposed market is consistent with Section 17B of the Act, which codifies Congress' findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks and that a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market. Section 17B further instructs the Commission to facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks, as the Exchange will for securities listed on the BX Venture Market, through one or more automated quotation systems operated by a registered securities association or a national securities exchange, providing reliable pricing information and reporting of transactions.

Finally, the Exchange believes the fees proposed in this filing are consistent with Section 6 of the Act,[74] in general, and with Section 6(b)(4) of the Act,[75] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The application and listing fees are substantially lower than comparable fees on The NASDAQ Stock Market and other national securities exchanges, commensurate with the smaller size and resources of the companies the BX Venture Market will attract. The application review fee and annual fees will allow the Exchange to recover some of the costs associated with the initial review of the company's application and monitoring of the company, including staff time and the systems supporting the review and monitoring. The fee schedule provides for a credit to offset an annual fee paid to NASDAQ for any company that lists on the BX Venture Market after a delisting from NASDAQ during the same calendar year. The Exchange believes this is a reasonable allocation of fees under the Act because it would be inequitable to charge a company a second fee in the same year to support services similar to those it had already paid for previously.

Fees are proposed for certain one-time events, such as substitution listings, recordkeeping changes, and written or oral hearings. These fees, which are the same as those charged on NASDAQ, offset some of the Exchange's costs associated with facilitating these events. Fees charged for a formal, written interpretation of the application of the Exchange's rules to a specific transaction or event similarly serve to recoup the cost of staff's time in providing the interpretation. The Exchange believes these fees are reasonable and fairly allocated. Staff will orally discuss the application of the Exchange's rules without any charge, and the Exchange provides written summaries of interpretations, the answers to frequently asked questions, and other guidance on its publicly available Web site. If, however, a company voluntarily requests a written interpretation tailored its unique facts, it is reasonable to recoup some cost of Staff's time for that process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Discussion

After careful review of the proposal and consideration of the comment letters,[76] the Commission finds that the proposed rule change to establish a new listing market on the Exchange is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[77] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[78] which, among other things, requires that rules of a national securities exchange to be designed 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or

[70] Nasdaq Rule 5210(h) and NYSE Amex Listed Company Guide Section 126.

[71] 15 U.S.C. 78f(b)(9).

[72] 15 U.S.C. 78f.

[73] 15 U.S.C. 78f(b)(5).

[74] 15 U.S.C. 78f.

[75] 15 U.S.C. 78f(b)(4).

[76] The Commission received eleven comment letters on the proposal. Of the comment letters received, five supported the proposal (Madrona Letter; Angel Letter; NVCA Letter; TechNet Letter; and BIO Letter), one generally supported the proposal but expressed several concerns (Niehoff Letter), and five opposed the proposal (MSD Letter; Pink OTC Markets Letter; OTC Markets Group Letter; MSD Letter II; and McCarthy Letter).

[77] 15 U.S.C. 78f.

[78] 15 U.S.C. 78f(b)(5).

dealers.[79] In addition, the Commission finds that the proposed fees are consistent with Section 6(b)(4) of the Act,[80] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

A. Benefits of the BX Venture Market

As noted above, the Exchange believes that the BX Venture Market will provide a transparent, well-regulated marketplace for companies being delisted from another national securities exchange for failure to meet quantitative listing standards and for smaller companies contemplating an initial exchange listing.[81] In addition, the Exchange notes that the BX Venture Market could make it easier for smaller, private, venture-backed companies and companies that currently trade in the over-the-counter market to raise capital, thereby, according to the Exchange, promoting job creation.[82]

In the Order Instituting Proceedings, the Commission asked whether commenters agree with the Exchange's contention that a BX listing could help companies raise capital and thus promote job creation within the United States. Five commenters supported this statement,[83] while one commenter disagreed.[84] Commenters in support asserted that, because of the lower listing standards of the BX Venture Market, this market will be particularly valuable to smaller and emerging companies that wish to make a public offering but are unable to meet the quantitative listing standards of other national securities exchanges.[85] A few commenters also expressed their belief that the BX Venture Market would attract companies and capital that might otherwise be drawn to foreign markets.[86] Three commenters opined that the BX Venture Market would attract companies that would otherwise transfer to, or remain on, the Pink Sheets or the OTC Bulletin Board, where there is less regulation and transparency.[87] The commenter who disagreed with the Exchange's statement believed that the over-the-counter market currently provides a robust solution for companies that are unable to meet the listing standards of a national securities exchange, and that the BX Venture Market seeks to occupy a niche that is already well-served by the over-the-counter market.[88]

The Commission believes the BX Venture Market could offer a number of benefits to smaller issuers and those who seek to invest in them. The BX Venture Market would provide small companies with an alternative to being quoted on the over-the-counter market by offering these companies the opportunity to list their securities on an exchange, in an environment that offers the potential of enhanced liquidity, transparency and oversight. Moreover, providing an alternative to the over-the-counter market could also facilitate competition for the quotation/listing of securities of smaller issuers.[89] The availability of an exchange listing, and the prospect of more efficient secondary market trading in the securities of smaller issuers, could facilitate their ability to raise capital and invest in the growth of their businesses.

As discussed more fully below,[90] the Commission believes the Exchange has appropriately addressed the potential risks associated with the listing of smaller issuers on an exchange by, among other things, providing for more rigorous vetting of listing applicants, enhanced surveillance of trading in BX-listed securities, and clear disclosure to investors that BX-listed securities differ from other exchange-listed securities.

B. Listing Standards

The Commission believes that, among other things, listing standards must be designed to assure that only bona fide companies with substantial public float, investor base, and trading interest will be listed. The development and enforcement of adequate listing standards governing the initial and continued listing of securities on an exchange are activities of critical importance to the financial markets and the investing public.[91] Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will have, sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[92] Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.[93] Once a security has been approved for initial listing, continued listing standards allow an exchange to monitor the status and trading characteristics of that security to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained, and so that only companies suitable for listing remain listed on a national securities exchange.

While the BX Venture Market would have quantitative listing standards that are lower than those of any other national securities exchange with an active listings program, the Commission notes that the Exchange proposes to adopt a number of enhanced vetting, surveillance/examination, and disclosure requirements.[94] As discussed in more detail below, the Commission views these enhanced requirements as being a necessary and integral part of the BX Venture Market proposal.[95] Accordingly, for the reasons discussed below, the Commission finds that the BX Venture Market listing standards, when viewed in conjunction with the Exchange's enhanced vetting, surveillance/examination, and disclosure requirements, are consistent with the Act.

[79] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[80] 15 U.S.C. 78f(b)(4).

[81] *See* Amendment No. 2.

[82] *Id.*

[83] *See* Madrona Letter, *supra* note 5 at 1–2; TechNet Letter, *supra* note 8 at 1; BIO Letter, *supra* note 8 at 2; NVCA Letter, *supra* note 8 at 2–3; and Angel Letter, *supra* note 8 at 3–4. *See also* Niehoff Letter, *supra* note 8 at 3.

[84] *See* OTC Markets Group Letter, *supra* note 8.

[85] *See* Madrona Letter, *supra* note 5 at 1; TechNet Letter, *supra* note 8 at 1; BIO Letter, *supra* note 8 at 1–2; and NVCA Letter, *supra* note 8 at 1–2.

[86] *See* Madrona Letter, *supra* note 5 at 2. *See also* Angel Letter, *supra* note 8 at 8 (stating that companies voluntarily "go dark" and that the SEC has made it easier for foreign issuers to deregister from U.S. markets) and Niehoff Letter, *supra* note 8 at 3 (stating that foreign second and third tier markets have yielded positive acceptance and economic results for U.S. issuers that have sought foreign marketplaces for their listings).

[87] *See* TechNet Letter, *supra* note 8 at 1. *See also* NVCA Letter, *supra* note 8 at 3 and Angel Letter, *supra* note 8 at 10. One commenter specifically stated that the "Commission should quickly approve experiments like [the BX Venture Market] in the small-cap sector because of the crisis in capital formation indicated by the dramatic drop in the number of exchange-listed U.S. companies." Angel Letter, *supra* note 8 at 1.

[88] *See* OTC Markets Group Letter, *supra* note 8 at 2.

[89] The Commission notes that such companies could determine not to pursue a listing on the BX Venture Market if they determine that the over-the-counter market better serves their needs. In addition, the Commission notes that securities of small companies could continue to be traded over-the-counter, even if listed on the BX Venture Market.

[90] *See* Section III.C, *infra.*

[91] *See, e.g.,* Securities Exchange Act Release No. 61912 (April 15, 2010), 75 FR 21094, 21094 (April 22, 2010) (SR–NYSE–2010–15).

[92] *See id.*

[93] *See id.*

[94] *See* Section III.C, *infra.*

[95] *See id.*

1. Quantitative Standards

In the Order Instituting Proceedings, the Commission asked whether the proposed initial and continued listing standards and the delisting process for the BX listing market are sufficiently designed to prevent the listing of stocks that are of a type that historically have been prone to fraudulent schemes. One commenter stated that the BX Venture Market will be a listing market for penny stocks because of the proposed minimum bid price requirements.[96] In its response, the Exchange noted that its listed penny stocks will not be exempt from the Commission's penny stock rules,[97] and stated its belief that its regulatory program will provide appropriate and adequate oversight.[98] Another commenter also expressed concern regarding the level of certain quantitative listing standards of the BX Venture Market.[99]

The Commission believes that the proposed quantitative listing standards, while lower than those of any other national securities exchange with an active listings program, are reasonably designed to help ensure that a fair and orderly market be maintained. As proposed, the minimum bid price per share for the initial listing of securities not previously listed on a national securities exchange is $1.00,[100] while the minimum bid price for securities previously listed on a national securities exchange is $0.25.[101] For purposes of the initial bid price requirement, a company will be considered to have been previously listed on another national securities exchange if it was listed on such an exchange at any time during the three months before its listing on the BX Venture Market, or in the case of a company that applies to list prior to September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2010 and September 30, 2011.[102]

With respect to the definition of "previously listed on a national securities exchange," one commenter stated that "[w]e do not understand why the Exchange suggests a three year and nine month look-back for initially determining whether a security was previously listed on another exchange, and only a three-month look-back when making such a determination after September 30, 2011."[103] The Commission notes that, subsequent to this comment, the Exchange shortened the look-back period, which will now begin on January 1, 2010. The Exchange believes that this look-back period is appropriate because the BX Venture Market would not have been available to such companies when they were delisted.[104] Further, the Exchange stated that it is appropriate to continue this treatment until September 30, 2011 because it will give such companies an adequate opportunity to learn about the BX Venture Market, complete their applications, and have their applications processed by the Exchange.[105] Additionally, the Exchange stated that the three-month look-back as period after September 30, 2011 is appropriate because it will allow a company sufficient time to apply for listing on the BX Venture Market and have its application processed.[106]

For continued listing, all securities will be required to maintain a minimum bid price of at least $0.25 per share.[107] With respect to the bid price requirement for continued listing on the Exchange, the Commission notes that if the security does not maintain a minimum $0.25 per share bid price for 20 consecutive trading days, Exchange staff would issue a Staff Delisting Determination to inform the company that its securities are immediately subject to suspension and delisting from the Exchange.[108] While a company could appeal that determination to a Hearings Panel,[109] such an appeal would not stay the suspension of the security.[110] The Hearings Panel may determine that the company has regained compliance if the security maintains a closing bid price of $0.25 per share or more for at least 10 consecutive trading days on the over-the-counter market, prior to the Hearings Panel's Decision.[111] In addition, companies that have previously failed to comply with the minimum bid price requirement would have stricter requirements for achieving compliance. Specifically, for a company that has received three or more Staff Delisting Determinations for failure to comply with the minimum bid price requirement in the prior 12 months, the Hearings Panel would determine that the company has regained compliance only if the security maintains a closing bid price of $0.25 per share or more for at least 20 consecutive trading days prior to the Hearings Panel's decision.[112] The Commission believes that this higher requirement for companies that were previously non-compliant is appropriate to reduce the likelihood of future instances of non-compliance and the potential investor confusion concerning the ability of the company to remain listed.

The Commission also notes that, according to the Exchange, the securities listed on the BX Venture Market would be considered penny stocks under Rule 3a51–1 under the Act, unless they qualify for one of the exceptions from the definition of a penny stock as set forth in Rule 3a51–1.[113] As such, broker-dealers would be required to pre-approve their customers for trading in penny stocks and investors will obtain the disclosures required to be made by broker-dealers in connection with penny stock transactions, providing them with trade and market information prior to effecting a transaction.[114] Further, there will be no "blue sky" exemption available under Section 18 of the Securities Act of 1933 for BX Venture Market-listed securities,[115] so companies will be required to satisfy state law registration requirements and other state laws that regulate the sale and offering of securities. Because some state laws and regulations may provide an exemption from certain registration or "blue sky" requirements for companies listed on the former Boston Stock Exchange, based on the higher listing standards previously applied by that Exchange, BX Rule 5103(c) would provide that the Exchange will not list, and will delist any BX Venture Market-

[96] *See* MSD Letter, *supra* note 5 at 2. *See also* MSD Letter II, *supra* note 8 at 1–2.

[97] *See* 15 U.S.C. 78*o*(h) and 17 CFR 240.15g–1–100.

[98] *See* BX Response Letter, *supra* note 9 at 4.

[99] *See* McCarthy Letter, *supra* note 8 at 2.

[100] *See* BX Rule 5505(a)(5).

[101] *See* BX Rule 5506(a)(4).

[102] *See* BX Rule 5506(b).

[103] OTC Markets Letter, *supra* note 8 at 8.

[104] *See* Amendment No. 2. The Exchange also stated that a number of companies were delisted in 2010 as a result of the financial crisis, and this look-back will allow these companies, which may have recovered but not yet meet the initial listing requirements of another exchange, to list on the BX Venture Market. *See id.*

[105] *See id.*

[106] *See id.*

[107] *See* BX Rule 5550(d).

[108] *See* BX Rule 5810(c)(1).

[109] The Hearings Panel is an independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange's Board of Directors. *See* BX Rule 5805(d).

[110] *See* BX Rule 5815(a)(1)(C).

[111] *See* BX Rule 5815(c)(1)(F).

[112] *See Id.*

[113] 17 CFR 240.3a51–1. The Exchange noted that it is not seeking an exemption from the penny stock rules for securities listed on the BX Venture Market: However, a security is not a penny stock if it has a price in excess of $5 or if its issuer has net tangible assets in excess of $2 million (if the issuer has been in continuous operation for at least three years) or $5 million (if the issuer has been in continuous operation for less than three years) or average revenue of at least $6 million for the last three years. *See* Amendment No. 2 (citing Rule 3a51–1(d) and (g), 17 CFR 240.3a51–1(d) and (g)).

[114] *See* Amendment No. 2.

[115] 15 U.S.C. 77r.

listed company that attempts to rely on such an exemption. Finally, as discussed in more detail below,[116] the Commission notes that the Exchange will have in place enhanced vetting, due diligence, and surveillance procedures designed to limit the initial or continued listing of companies that may be more prone to manipulation or fraud.

Furthermore, the Commission notes that the BX Venture Market would be an alternative to the over-the-counter market and could provide important benefits to small companies who otherwise would not qualify for an exchange listing. In particular, the Exchange's proposed listing standards would be higher than the requirements for quoting on the OTC Bulletin Board, which does not have any listing requirements per se,[117] but only requires companies to remain current in their filings with the Commission or other applicable regulatory authorities. For example, as the Exchange notes, the agreement of BX-listed companies to comply with the Exchange's corporate governance standards and the application of the Exchange's public interest authority could provide additional protections to investors than the protections available at their present trading venue.[118] The Commission also notes that trading in BX-listed securities would be subject to regulation by the Exchange through its trading rules and surveillance authority.

2. Qualitative Listing Standards

In the Order Instituting Proceedings, the Commission asked whether the proposed corporate governance standards for the BX listing market are sufficiently designed to assure an appropriate level of corporate governance. One commenter expressed support for the proposed corporate governance rules for BX-listed companies and stated that requiring small and emerging companies to have majority independent boards would be inappropriate and impose unnecessary costs upon these companies and their shareholders.[119] This commenter also expressed support for not requiring shareholder approvals for capital raising activities and stated that small companies frequently need to raise money without the expense and delay associated with a shareholder vote in order to thrive and react to opportunities.[120]

The Commission believes that the proposed qualitative listing requirements strike a reasonable balance between protecting the interests of investors and recognizing that smaller and emerging companies, with fewer resources, are likely to list on the BX Venture Market. The Commission notes that, although the Exchange would not require that a majority of the company's board of directors be independent or an independent nomination committee, the Exchange's listing rules impose independence requirements designed to help assure that certain key decisions of smaller companies are made by independent directors. Specifically, the BX Rules provide the independent directors with significant responsibilities, as well as an opportunity to meet separately from other directors. For example, independent directors must have regularly scheduled meetings at which only independent directors are present ("executive sessions").[121] In addition, the audit committee must be fully independent,[122] and compensation of the executive officers of the company must be determined, or recommended to the board for determination, either by independent directors constituting a majority of the board's independent directors in a vote in which only independent directors participate, or a compensation committee comprised solely of independent directors.[123] These provisions are designed to help lessen the potential of independent directors being dominated or overly influenced by other directors.

One commenter objected to the proposed rules that allow BX Venture Market-listed companies to phase-in compliance with independent audit committee and compensation committee requirements.[124] The commenter stated that BX-listed companies should be required to comply immediately with the proposed independent director requirements for the audit and compensation committees and that the Exchange's failure to require full compliance with these requirements prior to listing will likely result in some investors purchasing securities of companies that have inadequate audit standards or corporate governance practices.[125] In response, the Exchange stated that the proposed phase-in periods are identical to the rules of other national securities exchanges[126] and were permitted by the Commission's rulemaking regarding audit committees.[127] The Exchange also explained that the proposed phase-in provisions acknowledge the difficulty emerging companies have in recruiting independent directors.[128]

The Commission notes that the phase-in provisions for audit and compensation committees are substantially similar to those of Nasdaq and other national securities exchanges[129] and acknowledges the difficulty emerging companies have in recruiting independent directors. In addition, the Commission notes that, while the Exchange will require shareholder approval when a company adopts or materially amends a stock option or purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants,[130] the Exchange would not require shareholder approval for other share issuances. The Exchange believes that the companies expected to list on the Exchange may have a greater need to issue shares more frequently or more quickly, due to their expected smaller size and the business challenges they may be facing.[131] However, the Commission notes that the Exchange will require listed Companies to provide notice of any 5% change in its shares outstanding and any capital raising transactions,[132] and the Exchange Staff

[116] *See* Section III.C, *infra*.

[117] The OTC Bulletin Board is not a registered national securities exchange and is therefore not subject to the requirements of Section 6 or Section 19 of the Act.

[118] *See* Amendment No. 2.

[119] *See* NVCA Letter, *supra* note 8 at 2.

[120] *See id.* at 2–3.

[121] *See* BX Rule 5605(b).

[122] *See* BX Rule 5605(c)(2). In addition, BX Rule 5605(c)(2) requires that each member of the audit committee must meet the criteria for independence set forth in Rule 10A–3(b)(1) under the Act (subject to the exemptions provided in Rule 10A–3(c) under the Act). *See id.* BX Rule 5605(c)(2)(B), which is identical to Nasdaq Capital Market Rule 5605(c)(2)(B), provides an exception to this independence requirement under exceptional and limited circumstances.

[123] *See* BX Rule 5605(d). The chief executive officer may not be present during the voting or deliberations on the chief executive officer's compensation. *See id.* BX Rule 5605(d)(3), which is identical to Nasdaq Capital Market Rule 5605(d)(3), provides an exception to this independence requirement under exceptional and limited circumstances.

[124] *See* Pink OTC Markets Letter, *supra* note 5 at 5–6 and OTC Markets Group Letter, *supra* note 8 at 6.

[125] *See* OTC Markets Group Letter, *supra* note 8 at 6.

[126] *See* BX Response Letter, *supra* note 9 at 6 (citing Nasdaq Rule 5615(b) and NYSE Listed Company Manual Section 303A.00).

[127] *See id.* (referring to Rule 10A–3(b)(1)(iv)(A), 17 CFR 240.10A–3(b)(1)(iv)(A)).

[128] *See id.*

[129] *See e.g.,* Nasdaq Rule 5615(b) and NYSE Listed Company Manual Section 303A.00.

[130] *See* BX Rule 5635.

[131] *See* Amendment No. 2. The Exchange states that the proposed rules are comparable to the rules of the National Stock Exchange, which require shareholder approval for equity compensation issuances but not for other share issuances. *See* National Stock Exchange Rule 15.6.

[132] *See* BX Rule 5250(e)(1) and (7).

will review such issuances for public interest concerns, including issuances significantly below the market price or for the benefit of related parties.[133]

C. Enhanced Vetting, Surveillance/ Examinations, and Disclosure

1. Vetting of Prospective Issuers

The Commission believes that the Exchange's proposed vetting and due diligence process of prospective issuers are reasonably designed to reduce the risk of listing companies that might be more prone to fraud and manipulation and that might erode investor confidence in the market. The Commission notes that the Exchange will employ the staff in Nasdaq's Listing Qualifications Department to apply and enforce its listing standards pursuant to a regulatory contract [134] and that the rules of the BX Venture Market require capable, experienced persons to supervise the staff in Nasdaq's Listing Qualifications Department.[135] BX Rules further require that the Exchange's Chief Regulatory Officer have substantial prior regulatory experience with a national securities exchange or equivalent experience.[136]

In connection with the initial listing process, the BX Rules would require applicant companies to disclose, among other things, current and past actions and proceedings involving the company, current executive officers, directors, promoters, and ten percent or greater shareholders,[137] any events described under Item 401(f) of Regulation S–K involving officers, directors, promoters and control persons, and to furnish additional documentation.[138] The Exchange will not approve for initial listing, or allow the continued listing, of a company if an executive officer, director, promoter, or control person of the company was involved in any event described under Item 401(f)(2)–(8) of Regulation S–K [139] that occurred during the prior five years ("the automatic bar").[140] The Exchange also will not approve for initial listing, or allow the continued listing, of shell companies.[141] Moreover, even if the company satisfies the Exchange's listing requirements, the Exchange will still have the discretionary authority to deny listing to or to delist a security when necessary to preserve and strengthen the quality of and public confidence in its market.[142] The Commission notes that the Exchange can use its discretionary authority only to deny listing, apply additional or more stringent criteria for initial or continued listing, or suspend or delist securities.[143]

The Commission emphasizes that the Exchange does not have the discretionary authority to approve the initial listing of securities that do not meet the enumerated listing standards, or to maintain the listing of securities that stay below the continued listing standards.[144] If the Exchange exercises discretion to permit the listing of a company after it has discovered that an executive officer, director, promoter, or control person of the company was involved in an event described under Item 401(f) of Regulation S–K that does not rise to the level of an automatic bar (such as if the event occurred more than five years prior), or a past corporate governance issue of the company,[145] the decision to list such a company must be approved in writing by the Exchange's Chief Regulatory Officer.[146]

The Commission notes that one commenter noted the importance of screening prospective listed companies in light of the failure of the former American Stock Exchange Emerging Company Marketplace.[147] This commenter then suggested that the Exchange should conduct background checks and other similar review of potential listing companies and not be permitted to merely rely on the documents presented by an issuer during the listing process.[148] As discussed below, the Exchange will review documents other than those presented by an issuer during the listing process. Specifically, the Exchange would review the applicant company's public filings and proxy disclosures, and conduct background investigations of its executive officers, directors, promoters, and control persons using publicly available databases and other public resources, such as Lexis-Nexis and the Web-CRD regulatory database, and web-based search engines.[149] Moreover, the Exchange will engage independent qualified third party investigative firms when it uncovers a regulatory issue or potential public interest concern that does not trigger an automatic bar to listing and the Exchange has determined to not exercise its discretionary authority to deny the listing, or when it would be impractical for the Exchange to research a regulatory history that occurred outside of the United States.[150] For example, if the Exchange becomes aware of media accounts of criminal allegations or improper business practices, or indication of financial impropriety, the Exchange will engage an independent qualified third party investigative firm.[151] The Exchange also will make random, regular referrals of at least 10% of the applicants that were not previously listed on a national securities exchange to the independent qualified third party investigative firm.[152] Any decision to list a company that has been referred to third party review must be approved in writing by the Exchange's Chief Regulatory Officer.[153]

In sum, the Commission believes that the proposed vetting and due diligence measures are reasonably designed to reduce the risk of fraudulent and

[133] *See* Amendment No. 2.

[134] *See* BX Rule 5102. In addition to review of companies seeking an initial listing, the Listing Qualifications Department will also monitor compliance with all listing standards on an on-going basis through the regular review of public filings, Form 8–K disclosures, press releases, market data, and closing bid price. *See id.*

[135] *See id.* Notwithstanding the contractual agreement with Nasdaq, the Exchange stated that it retains ultimate legal responsibility for, and control of, these functions. *See id.*

[136] *See id.*

[137] *See* BX Rule 5205(b). BX Rules provide that an applicant company must provide descriptions and supporting documentations of all pending or prior actions and proceedings involving current executive officers, directors, promoters, and ten percent or greater shareholders of the company, and all actions and proceedings commenced within the past 10 years involving the company, its predecessors and subsidiaries. *See id.*

[138] *See id.*

[139] These events include criminal convictions and pending charges, violations of securities laws, and court or administrative actions barring or suspending a person from engaging in certain securities-related activities.

[140] *See* BX Rule 5103(a).

[141] *See* BX Rule 5103(b).

[142] *See* BX Rule 5104.

[143] *See id.*

[144] *See id.*

[145] The Exchange's review for past corporate governance issues may include activities taking place while the company is listed on the Exchange or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. *See* BX Rule IM–5104–3. The Exchange may take appropriate action if it determines that there have been violations or evasions of such corporate governance standards. *See id.*

[146] *See* BX Rule IM–5104–1 and 3.

[147] *See* Pink OTC Markets Letter, *supra* note 5 at 6–7 (referring to the American Stock Exchange Emerging Company Marketplace that the American Stock Exchange operated from 1992 to 1995). *See also* OTC Markets Letter, *supra* note 8 at 3.

[148] *See* Pink OTC Markets Letter, *supra* note 5 at 6–7.

[149] *See* BX Rule 5205(c). The Exchange also will conduct background investigations, as applicable, whenever a new executive officer, director, promoter, or control person becomes associated with a BX Venture Market-listed company; whenever a BX Venture Market-listed company makes a disclosure of an event described under Item 401(f) of Regulation S–K; and whenever the staff in the Listing Qualifications Department, in the course of its on-going monitoring of listed companies, identifies a potential public interest concern. *See* BX Rule 5205(e).

[150] *See* BX Rule 5205(c) and (d).

[151] *See* BX Rule 5205(c).

[152] *See* BX Rule 5205(d).

[153] *See* BX Rule 5205(c).

manipulative behavior with respect to the listing and/or trading of BX-listed securities.

2. Surveillance/Examination

The Commission believes that strong and effective surveillance and examination programs are vital, particularly with respect to BX Venture Market-listed securities, which are subject to listing standards that are lower than those of any national securities exchange with an active listings program. Under the proposal, the Exchange will monitor real-time trading of securities listed on the BX Venture Market.[154] The Exchange would contract with FINRA to regulate market activity of BX-listed securities (*e.g.,* to implement surveillance patterns to detect possible insider trading, front-running, fraud, auto-execution manipulation, mid-point cross manipulation, wash sales, layering, open/close marking, and Reg SHO clearing fails),[155] but the Exchange would retain ultimate legal responsibility for, and control of, all regulatory functions for the Exchange.[156] The Commission expects the Exchange to ensure that it and FINRA have effective regulatory programs relating to BX Venture Market-listed securities before the BX Venture Market begins operations. Also, the Exchange committed to represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations, before the operation of the Exchange, that it and FINRA have adequate regulatory procedures and programs in place to effectively regulate the BX Venture Market and its listing program, and adequate procedures and programs in place to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems.[157]

The Commission notes that one commenter stated that there have been significant problems in the penny stock market, including boiler room sales practices by brokerages and market manipulation (including the spreading of false rumors) by stock promoters and brokerages that hold a block of a given stock.[158] This commenter is also concerned that new technology has given stock manipulators powerful tools to distort the market and swindle retail investors.[159] As such, this commenter stated that extreme caution is warranted when any party proposes to establish a new market to trade penny stocks.[160] The commenter also expressed concern that the proposed BX rules will not prevent penny stock promoters or boiler room brokerages from asserting that securities they are offering and selling are exempt from state registration because they are listed on the Boston Stock Exchange.[161] In addition, this commenter stated that twelve states have registration exemptions for securities listed on the Boston Stock Exchange, which were predicated on the protections provided by the higher listing standards of that exchange.[162] The Commission acknowledges these comments and notes that BX stated that its regulatory program will have: (i) Surveillance patterns revised to incorporate trading activity of BX Venture Market-listed securities on the Exchange and on the over-the-counter market; (ii) specific automated surveillance patterns to address any rule and functionality changes resulting from the BX Venture Market initiative; and (iii) calibrated surveillance patterns to detect potential issues that may arise particularly in low-priced, less liquid stocks.[163] Moreover, the regulatory program will include review of the activity of firms on the BX Venture Market.[164] The review will include "focused exams" concentrated on sales practices and firm oversight, as well as any other activities required to effectively regulate the market.[165] As stated above, the Exchange represented that a regulatory program for these activities will be in place before the BX Venture Market begins operations.[166] Further, the Commission notes, in addition to Commission oversight and oversight by the Exchange and FINRA, under Section 18 of the Securities Act of 1933, "the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions."[167]

The Exchange also committed to providing a monthly report to the Directors of the Division of Trading and Markets and Office of Compliance Inspections and Examinations describing any significant developments on the BX Venture Market, including companies added to or removed from the market during that period.[168] In addition, the Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the Division of Trading and Markets and Office of Compliance Inspections and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter.[169] The Exchange also stated that it will provide copies of the Listing Department's procedures manuals and surveillance procedures used by FINRA and the Exchange to the Commission's Office of Compliance Inspections and Examinations.[170]

3. Disclosure of BX-listed Securities

The Commission believes that it is important to reduce the likelihood of investor confusion regarding the BX Venture Market. Three commenters expressed concern that investors would confuse BX Venture Market-listed securities with Nasdaq-listed securities.[171] One commenter believed that ticker symbols for BX Venture Market-listed securities should differentiate such securities from other securities that meet the higher listing standards typically associated with listing on a national securities exchange.[172] This commenter suggested that BX-listed securities should only use four or five character ticker symbols because shorter symbols are typically used by exchanges with higher listing standards than the BX Venture Market.[173] Further, this commenter stated that if BX-listed securities are permitted to use symbols with three or fewer characters, those securities would be precluded from trading in the over-the-counter market because the OTCBB and Pink's OTC systems are programmatically limited to trading four

[154] *See* BX Rule 5105.

[155] *See* BX Rule 5105 and Amendment No. 2. The Exchange stated that it will have in place, before the BX Venture Market is operational, a contractual agreement with FINRA to regulate market activity on the Exchange. *See* BX Rule 5105 and Amendment No. 2.

[156] *See* BX Rule 5105 and Amendment No. 2.

[157] *See* Amendment No. 2.

[158] *See* MSD Letter, *supra* note 5 at 3 and MSD Letter II, *supra* note 8 at 2.

[159] *See* MSD Letter II, *supra* note 8 at 2.

[160] *See* MSD Letter, *supra* note 5 at 3 and MSD Letter II, *supra* note 8 at 2.

[161] *See* MSD Letter, *supra* note 5 at 2.

[162] *See id.* The Exchange noted that the Massachusetts Securities Division has requested comment on a proposed rule change to its regulations to eliminate the exemption from the registration requirements for securities listed on the BX Venture Market. *See* Amendment No. 2.

[163] *See* BX Rule 5105 and Amendment No. 2.

[164] *See* BX Rule 5105.

[165] *See id.*

[166] *See* BX Rule 5105 and Amendment No. 2.

[167] 15 U.S.C. 77r(c)(1).

[168] *See* BX Rule 5105 and Amendment No. 2.

[169] *See* BX Rule 5105.

[170] *See* Amendment No. 2.

[171] *See* MSD Letter, *supra* note 5 at 3, MSD Letter II, *supra* note 8 at 2, Pink OTC Markets Letter, *supra* note 5 at 4–5, and Niehoff Letter, *supra* note 8 at 1–2.

[172] *See* Pink OTC Markets Letter, *supra* note 5 at 2 and OTC Markets Group Letter, *supra* note 8 at 5.

[173] *See* Pink OTC Markets Letter, *supra* note 5 at 2.

or five character symbols.[174] This commenter reiterated these issues in a subsequent letter, and expressed concern that shorter ticker symbols would reduce the amount of over-the-counter market trading volume in BX-listed securities and result in a decrease in competition for execution of investor orders.[175] A second commenter disagreed and contended that ticker symbols no longer say anything to the investor about the nature of the company and changing symbols can cause confusion.[176] However, this commenter stated that it is reasonable to require BX-listed securities to use only four or five character symbols until the industry technology can handle shorter ticker symbols.[177]

With respect to the comments regarding ticker symbols, the Exchange stated that the BX Venture Market is a national securities exchange and a party to the existing National Market System Plan for the Selection and Reservation of Securities Symbols ("Symbology Plan"), and as such is eligible to trade symbols of one to five characters.[178] The Exchange explained that this eligibility is important because the BX Venture Market is intended to afford a listing venue to former exchange-listed companies that would want to retain their symbols.[179] The Exchange stated its belief that its proposed data vendor display requirement is a far more effective means of communicating the listing market to investors.[180] Further, the Exchange stated that BX Venture Market-listed securities should not be limited to four or five characters because firms can quote or trade securities on either the Exchange or in the over-the-counter market until their technology is updated, and listed companies that believe this hurts their liquidity can elect to change their symbol.[181]

As noted in Section II above, the Exchange proposes different ticker symbol requirements, depending on whether the company was previously listed on a national securities exchange. Specifically, the Exchange would prohibit companies that were not previously listed on a national securities exchange from utilizing one to three character ticker symbols.[182] Companies that were delisted from a national securities exchange before listing on BX could retain their one to three character ticker symbols, provided that the company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8–K.[183] The Commission believes that such approach is not inconsistent with the Act. As the Exchange noted, this approach is permitted under the Symbology Plan.[184] In addition, as stated above, although certain companies might be permitted to retain their one to three character ticker symbols when listing on the BX Venture Market, in order to inform investors, such companies would be required to issue a press release announcing its delisting and comply with the disclosure requirements of Form 8–K.[185] The Commission acknowledges the comments that companies with ticker symbols of less than four characters cannot trade on the OTCBB or the Pink OTC system because they are programmatically limited to four or five character symbols;[186] however, the Commission notes that companies that believe this limitation hurts their liquidity can elect to not list on the BX Venture Market, or, as the Exchange noted in the BX Response Letter, change their symbol.[187]

While the Exchange is not substantially changing the ticker symbol length a BX Venture Market-listed company can use,[188] the Exchange has proposed several other measures intended to reduce the likelihood that investors will believe securities listed on the BX Venture Market are of the same caliber as securities listed on other national securities exchanges. In particular, the Exchange proposes specific rules to differentiate securities of the BX Venture Market from those of the NASDAQ Stock Market, which is also owned by the NASDAQ OMX Group. Toward that end, the listing rules of the BX Venture Market specify that a BX Venture Market-listed company must refer to its listing as on the BX Venture Market, unless otherwise required by applicable rules or regulations, and that such company must never represent that it is listed on The NASDAQ Stock Market.[189] To enforce this prohibition, the Exchange has committed to monitor the press releases issued by BX Venture Market-listed companies and to annually review each company's Web site to determine how each company is referring to its listing.[190] A BX Venture Market-listed company that refers to itself as listed on the NASDAQ Stock Market or on NASDAQ will be subject to immediate delisting.[191]

Additionally, in describing the BX Venture Market, the Exchange will refer to itself as the BX Venture Market, and not as NASDAQ OMX BX, in its communications and marketing literature.[192] The Exchange will also include information prominently on its Web site describing the differences between the BX Venture Market and other national securities exchanges, including Nasdaq.[193] For example, the Exchange's Web site will inform users in a prominent manner that BX Venture Market-listed securities are not "blue sky" exempt, are not NMS securities, and are not subject to the Commission's trade-through rule.[194] The Exchange's Web site also will provide side-by-side comparisons of BX Venture Market and NASDAQ Stock Market features.[195] Additionally, marketing materials for the BX Venture Market will include a prominent disclaimer explaining that BX Venture Market is separate from, and not a tier of, the NASDAQ Stock Market.[196] Further, in order to prevent regulatory arbitrage, the Exchange proposes that any company that meets the quantitative (*e.g.,* financial) requirements for listing on any tier of the NASDAQ Stock Market will not be approved for listing on the BX Venture Market.[197] Specifically, it is appropriate for the Exchange to restrict such companies from listing on the BX Venture Market to reduce the likelihood of a company listing on the Exchange to benefit from lower quantitative listing standards when such companies are of sufficient size that it should comply with the higher Nasdaq listing standards.

The Exchange will disseminate information about securities listed on the BX Venture Market via several

[174] *See id.* at 2–3.

[175] *See* OTC Markets Group Letter, *supra* note 8 at 5–6.

[176] *See* Angel Letter, *supra* note 8 at 11.

[177] *See id.*

[178] *See* BX Response Letter, *supra* note 9 at 7.

[179] *See id.*

[180] *See id.* at 8.

[181] *See id.* at note 28.

[182] *See* BX Rule 5210(j).

[183] *See id.*

[184] *See* Securities Exchange Act Release No. 58904 (November 6, 2008), 73 FR 67218 (November 13, 2008) (order approving the National Market System Plan for the Selection and Reservation of Securities Symbols).

[185] *See* BX Rule 5210(j).

[186] *See* Pink OTC Markets Letter, *supra* note 5 at 2–3.

[187] *See* BX Response Letter, *supra* note 9 at note 28.

[188] As stated above, the Exchange, however, will prohibit companies not previously listed on a national securities exchange from utilizing a one to three character ticker symbol.

[189] *See* BX Rule 5250(b)(4).

[190] *See* Amendment No. 2.

[191] *See* BX Rule 5250(b)(4).

[192] *See* BX Rule 5106 and Amendment No. 2.

[193] *See* BX Rule 5106 and Amendment No. 2.

[194] 17 CFR 242.611. *See* Amendment No. 2.

[195] *See id.*

[196] *See* BX Rule 5106.

[197] *See* BX Rule 5210(i).

mechanisms to ensure broad dissemination of quotation and last sale information.[198] The Exchange committed to ensuring that BX Venture Market-listed securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on its data products and to end-users of the data.[199] The Exchange stated that all market data for BX Venture Market-listed securities will include a unique data identifier in the "Market Center" field to distinguish the security from those listing on other exchanges and the over-the-counter markets ("Market Center Identifier").[200] The Exchange represented that it will require that market data distributors use the Market Center Identifier to prominently identify the listing market with quotation and last sale information for BX Venture Market-listed securities through its distribution agreements and by amendments to its global market data policy document.[201] Specifically, the Exchange will require market data distributors to prominently identify the BX Venture Market as the listing market, and where the display of text is not consistent with the display methodology or user needs of the distributor, to use "B".[202]

The Commission believes that the measures described above that are designed to help clarify the differences between the BX Venture Market and the NASDAQ Stock Market should aid in reducing the potential for investor confusion. For example, as stated above, the Exchange stated that it will require market data distributors to prominently display the listing market for BX Venture Market-listed securities through its distribution agreements and its global market data policy document and that these agreements and amendments will be in place before the BX Venture Market begins operations.[203] The Exchange also represented that the Market Center Identifier will be distributed by the Exchange and displayed by the data vendors upon launch of the market.[204] To assure compliance with this requirement, the Exchange stated that it will proactively review the displays of prominent data distributors in connection with the launch of the market and the displays of all data distributors periodically after the launch, and require immediate compliance if any displays fail to meet the requirements of the market data agreements.[205] The Exchange further stated that if a market data vendor does not satisfy this display requirement, the Exchange will take action against the vendor, up to and including terminating the vendor's ability to receive data from the Exchange.[206] Lastly, the Exchange has stated that it is committed to working with market participants and the Commission to evaluate, on an on-going basis, whether the display requirement described above is effective in distinguishing BX Venture Market-listed securities from those listed on another national securities exchange in order to reduce investor confusion.[207]

The Commission recognizes the reputational tradeoff associated with distinguishing the BX Venture Market from Nasdaq. If the BX Venture Market were to fail, Nasdaq would not suffer as much reputational damage as investors and issuers would not necessarily associate a BX Venture Market failure with Nasdaq. As a result, Nasdaq may not have as much incentive to ensure that the BX Venture Market is a success than if Nasdaq had more reputation capital on the line. While considering this tradeoff, the Commission believes that Nasdaq has sufficient incentives, absent this reputational risk, to ensure that the BX Venture Market is a success, and that avoiding the risk of investor confusion is a priority.

D. Review Process

The Commission believes that the proposed deficiency notification, delisting, and appeals procedures strike a balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing transparency to the process and potentially fostering investor confidence in the integrity of the markets.

The Commission further notes that the compliance periods and discretion to allow a non-compliant company to remain listed are generally shorter on the BX Venture Market than what would be allowed a company listed on other exchanges, including Nasdaq. For example, a Hearings Panel would be permitted to grant only 90 calendar days for a company to regain compliance with a listing standard,[208] instead of the 180 calendar days available on Nasdaq.[209] Similarly, a company that falls below the market value of listed securities requirement would be provided a 90 calendar day compliance period,[210] instead of the 180 days available to a Nasdaq company.[211] The Commission believes that these shorter timelines will serve to protect investors, given that the securities listed on the BX Venture Market are subject to lower listing standards than other exchange-listed securities.

One commenter suggested that the Exchange should increase the amount of time a company has to regain compliance with BX listing standards from 90 to 180 days because it will allow companies that are trading publicly for the first time to learn the nuances of the market and to adjust to the market.[212] The Commission believes that the compliance period timeframe proposed by the Exchange is appropriate. The Commission notes that the listing standards of the BX Venture Market are substantially lower than the listing standards of other national securities exchanges. The Commission believes that the lower-tier and smaller companies likely to trade on the BX Venture Market warrant careful monitoring and, for reasons of investor protection, believes that such companies cannot be permitted to not meet listing standards for a lengthy period of time. The Commission believes that 90 calendar days is sufficient to determine whether BX-listed companies have the resources and capability to attain compliance with listing standards.

Overall, the Commission believes that the proposed appeals process is reasonable and affords adequate due process to issuers, while at the same time bringing efficiency to the listing and delisting processes. Among other things, the process provides companies with the right to appeal a staff determination to deny initial or continued listing to a Hearings Panel.[213] The company has the right to appeal an

[198] *See* Amendment No. 2.

[199] *See* BX Rule 5106.

[200] *See* Amendment No. 2. The Exchange stated that BX Venture Market-listed securities would be identified with its own unique Market Center Identifier ("B") on any new consolidated data feeds and in the BX Venture Market Daily List data product. *See id.* The Exchange stated that the Daily List will be adopted in a separate filing with the Commission. *See id.* The Commission notes that approval of the BX Venture Market in no way prejudges or determines what action the Commission may take with respect to any data product not previously approved by the Commission.

[201] *See* BX Rule 5106 and Amendment No. 2.

[202] *See* BX Rule 5106 and Amendment No. 2.

[203] *See* BX Rule 5106 and Amendment No. 2.

[204] *See* BX Rule 5106.

[205] *See* BX Rule 5106 and Amendment No. 2.

[206] *See* BX Rule 5106 and Amendment No. 2.

[207] *See* Amendment No. 2.

[208] *See* BX Rule 5815(c)(1)(A).

[209] *See* Nasdaq Rule 5815(c)(1)(A).

[210] *See* BX Rule 5810(c)(3)(B).

[211] *See* Nasdaq Rule 5810(c)(3)(C).

[212] *See* BIO Letter, *supra* note 8 at 3.

[213] *See* BX Rule 5815.

adverse Hearings Panel decision to the Listing Council.[214] All decisions of the Listing Council, as well as certain Hearings Panel decisions also will be subject to review at the discretion of the Exchange Board.[215]

E. Fees

In response to the proposed fees, one commenter stated that a market targeted to smaller companies, with listing requirements and listing costs tailored to their current economic reality, would open a door that has been closed for many venture-backed companies.[216] After considering this comment, the Commission finds that the proposed fees are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) and (b)(5) of the Act,[217] which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal does not unfairly discriminate between issuers as all companies will be subject to the same fee schedule. The Commission believes that the proposed fees are reasonable, given the regulatory expenses of the Exchange and the types of companies expected to list on the Exchange. The Commission notes that the Exchange has committed to enhanced vetting, examination, surveillance and disclosure requirements, all of which require additional expenses. In addition, the Commission expects the Exchange to maintain its commitment of resources to its regulatory oversight of the listing process and its ongoing compliance review of listed companies under its regulatory program.

According to the Exchange, the application review fee will allow the Exchange to recover some of the costs associated with the initial review of the company's application, including staff time and the systems supporting the initial review process.[218] Similarly, the annual fee would offset the staff and system costs of continued monitoring of the company.[219] In addition, the Commission notes that the proposed application and annual fees are less than those charged by other national securities exchanges.[220] Also, the Exchange states that fees for certain one-time events (*i.e.,* a $7,500 fee for substitution listing events, a $2,500 fee for record-keeping changes, and a $4,000 or $5,000 fee for a written or oral hearing, respectively) will allow it to recover some of the costs associated with facilitating these events.[221] The Exchange further proposes a $15,000 fee for written interpretations of Exchange rules, and states that the fee for written interpretations of Exchange rules is intended to recoup the cost of Exchange staff's time in reviewing and responding to the request and that no such fee would be charged in connection with requests involving a company's initial listing application, given that the company will pay an application fee.[222]

The Commission notes that companies that were previously listed on Nasdaq would receive a credit, which could be used only to offset the annual fee, for any annual fees paid to Nasdaq during the same calendar year that they initially list on the BX Venture Market, for the months following their delisting from Nasdaq.[223] The Exchange believes that this credit is reasonable because it will avoid double charging companies that have paid Nasdaq a non-refundable fee to provide similar services as those that the Exchange will provide under its annual fee.[224] In approving this fee credit, the Commission notes its expectation that a rigorous and independent review by the Exchange of compliance with the listing standards will be conducted for any former Nasdaq-listed company that is eligible for a credit, just as for any company that lists on the BX Venture Market.

F. Market Data

Currently, NMS securities listed on national securities exchanges are subject to a consolidated trade reporting plan,[225] so that all trades are disseminated in a single data stream. Likewise, because all trades in non-NMS securities today occur in the over-the-counter market, complete trade data is collected and distributed by FINRA. Since there currently is no joint SRO trade reporting plan for non-NMS securities, trades on the BX Venture Market and any other exchange that might trade BX Venture Market-listed securities pursuant to unlisted trading privileges ("UTP") could be reported separately from the over-the-counter trade data disseminated by FINRA. For similar reasons, quotation data could be disseminated separately by BX and any UTP exchange.

In the Order Instituting Proceedings, the Commission asked whether BX sufficiently addressed how quotations and transactions reports relating to BX-listed securities will be disseminated. The Commission was concerned that the proposal could result in fragmentation of pricing information relating to these securities and undermine the ability of investors to receive best execution. One commenter stated that fragmentation of pricing data was a valid concern.[226] Another commenter stated that market data for BX-listed securities must be disseminated in a manner that makes clear that BX-listed securities are not NMS securities and that they do not meet the higher listing standards for exchange-listed securities.[227] This commenter stated that in order to prevent investor confusion between NMS securities and BX-listed securities, quotations and transaction reports for BX-listed securities should not be disseminated under any NMS plan and should not be commingled with NMS data.[228] Further, this commenter stated that it would be inappropriate for market data of BX-listed securities to be distributed under the Nasdaq UTP plan.[229] Another commenter stated that BX must clarify how market data

[214] *See* BX Rule 5820.

[215] *See* BX Rule 5825.

[216] *See* Madrona Letter, *supra* note 5 at 1.

[217] 15 U.S.C. 78f(b)(4) and (b)(5).

[218] *See* Amendment No. 2. The Exchange proposed a $7,500 initial listing fee, and a $15,000 annual fee for the first class of securities listed on the Exchange and a $5,000 annual fee for each additional class of securities listed on the Exchange. *See* BX Rule 5910.

[219] *See* Amendment No. 2.

[220] For example, the Exchange noted that the initial listing fees for listing common stock on the NASDAQ Capital Market range from $50,000 to $75,000 and the annual fees are $27,500; the initial listing fees for listing common stock on NYSE Amex range from $50,000 to $70,000 and the annual fees range from $27,500 to $40,000; the initial listing fees for listing common stock on the New York Stock Exchange range from $150,000 to $250,000 and the annual fees range from $38,000 to $500,000. *See* Amendment No, 2 (citing Nasdaq Rule 5920(a)(1) and (c)(1)(A), NYSE Amex Listed Company Guide Sections 140 and 141, and NYSE Listed Company Manual 902.02 and 902.03).

[221] *See* BX Rules 5815(a)(3) and 5910 and Amendment No. 2.

[222] *See* BX Rule 5602 and Amendment No. 2. *See also* Securities Exchange Act Release No. 61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (SR–NASDAQ–2009–081) (order granting approval of Nasdaq's proposed rule change to modify the fee for written interpretations of Nasdaq listing rules to $15,000).

[223] *See* Amendment No. 2.

[224] *See id.*

[225] *See* 17 CFR 242.608.

[226] *See* Niehoff Letter, *supra* note 8 at 2–3.

[227] *See* Pink OTC Markets Letter, *supra* note 5 at 2–3 and OTC Markets Group Letter, *supra* note 8 at 6–7.

[228] *See* Pink OTC Markets Letter, *supra* note 5 at 3. *See also* OTC Markets Letter, *supra* note 8 at 7.

[229] *See* Pink OTC Markets Letter, *supra* note 5 at 3. *See also* OTC Markets Letter, *supra* note 8 at 7.

products will be engaged to ensure broad dissemination of quotation and last sale information and suggested that the Commission require the consolidation of market place quotation and last sale data for BX Venture Market-listed securities from the BX execution system and the over-the-counter market.[230] However, a third commenter believed that the proposal could provide a good experiment in the dissemination of market data outside the existing NMS plans, in which Nasdaq OMX directly markets the data to market participants.[231]

In response, the Exchange stated that it "is committed to ensuring that quotations and transaction information for listed securities occurring on The BX Venture Market * * * are consolidated fully with the same information from OTC quoting and trading that FINRA supervises." [232] Additionally, in response to comments that market data for BX Venture Market-listed securities must be disseminated in a manner that makes clear that these securities are not NMS securities and that they do not meet the higher listing standards for exchange-listed securities, the Exchange proposed restrictions on the use of one to three character ticker symbols, as discussed above.[233]

With respect to the trading of BX Venture Market-listed securities, the Commission notes that until other exchanges have appropriate trading rules and oversight mechanisms for transactions in second-tier securities, other exchanges will not be able to extend UTP to BX-listed securities.[234] The Commission notes, however, that until other exchanges trade BX Venture Market-listed securities on a UTP basis, BX Venture Market-listed securities could trade not only on BX, but also over-the-counter, thus increasing the competition for orders in these securities, as these securities previously were only able to trade over-the-counter or not at all.

G. Margin

BX-listed securities may be less liquid and more volatile than securities listed on another national securities exchange. In anticipation of the BX Venture Market, the Commission notes that FINRA has issued Regulatory Notice 11–15 ("FINRA Notice"),[235] which reminds its members to consider the risks associated with low-priced equity securities [236] when extending credit in a strategy-based or portfolio margin account.[237] According to the FINRA Notice, "[p]rice volatility is more often associated with low-priced, rather than higher-priced, equity securities. Low-priced equity securities tend to trade with bid and ask spreads that make up a greater percentage of the security's price. This is especially true for newer companies whose stock is priced low and whose earnings may be more volatile. In addition, due to lower volumes, low priced equity securities can experience large price swings during a given trading day, which translates into greater price risk. Further, low-priced equity securities may be removed from an index, which can increase the volatility and exacerbate the price risk." [238]

The FINRA Notice also states that "[f]irms should take into account volatility and concentrated positions in a single customer account and across all customer accounts, as well as the daily volume and market capitalization of each security when imposing "house" maintenance margin requirements. Firms should also consider the fundamental business drivers and financial performance of the issuer in setting house requirements. Increased maintenance margin requirements can help to ensure that the equity in each customer account is sufficient to cover any large variances in the price of a security." [239] Further, the Notice states that "FINRA believes that a best practice is for firms to pay close attention to low-priced equity securities when considering the dollar amount of credit to be extended to any one customer. Similarly, in a portfolio margin account, FINRA believes that a best practice is for firms to subject low-priced or concentrated positions to heightened review and daily monitoring, subjected to higher margin requirements, where appropriate, and to include such positions in exception reporting to senior management." [240] Finally, the FINRA Notice reminds members that, pursuant to the SEC's net capital rule, Rule 15c3–1,[241] "if markets can absorb only a limited number of shares of a security for which a ready market exists (a marketplace blockage), the non-marketable portion in the proprietary or other accounts of a broker dealer is subject to a 100 percent deduction to net capital, and is treated as a non-allowable asset." [242] As such, the FINRA Notice reminds firms that when dealing with low-priced equity securities that are thinly traded or concentrated, a firm may be required to impose heightened house margin requirements, where appropriate, and value the securities conservatively, in accordance with FINRA's margin requirements.[243]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments

[230] *See* Niehoff Letter, *supra* note 8 at 2.

[231] *See* Angel Letter, *supra* note 8 at 10.

[232] BX Response Letter, *supra* note 9 at 9.

[233] *See* Section III.C.3, *infra.*

[234] *See* 17 CFR 240.12f–5. Rule 12f–5 provides that "[a] national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges." *Id.* Specifically, the Commission noted that Rule 12f–5 "is intended to preserve a benefit of Commission review of UTP applications," referring to the fact that the Commission previously reviewed each UTP application to ensure, among other things, that the applicant exchange had proper trading rules in place to provide a fair and orderly market in each security named, and had sufficient standards for regulatory oversight of each security to provide for the protection of investors. *See* Securities Exchange Act Release Nos. 35323 (February 2, 1995), 60 FR 7718 at 7719, 7722 (February 9, 1995); 35637 (April 21, 1995), 60 FR 20891 at 20892, 20895 (April 28, 1995). Here, the Exchange proposed listing standards that are substantially lower than those of any other listings market, but the Exchange also proposed to adopt a number of enhanced surveillance, oversight and disclosure requirements. As discussed previously, the Commission views these enhanced requirements as being a necessary and integral part of the BX Venture Market proposal. Since these enhanced requirements address concerns associated with the listing of securities that do not meet the listing requirements of other national securities exchanges and since Rule 12f–5 requires any exchange seeking to trade securities on a UTP basis to have in effect rules that provide for transactions in those securities, the Commission believes that any national securities exchange wishing to extend UTP to a BX Venture Market-listed security would also need to supplement their surveillance, oversight and disclosure requirements in order to comply with Rule 12f–5.

[235] Low-Priced Equity Securities, FINRA Regulatory Notice 11–15 (April 2011) ("FINRA Notice").

[236] The BX Venture Market may likely have low-priced equity securities listed on its exchange.

[237] As equity securities listed on a national securities exchange, the securities traded on the BX Venture Market would meet the definition of "margin security" under the Federal Reserve Board's Regulation T, which specifies initial margin requirements. *See* 12 CFR 220.2. However, in extending credit to customers in a margin account, broker-dealers also must comply with SRO margin requirements (including maintenance margin requirements). *See, e.g.,* FINRA Rule 4210.

[238] FINRA Notice.

[239] *Id.*

[240] *Id.*

[241] 17 CFR 240.15c3–1.

[242] *See* FINRA Notice, *supra* note 235; *see also* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, dated October 5, 1987 to Edward Kwalwasser, Esq., NYSE and Mr. Thomas R. Cassella, NASD; and FINRA Interpretation Rule 15c3–1(c)(2)(vii)/01 in FINRA's Interpretations of Financial and Operational Rules. These interpretations may be found at FINRA's Web site at: *http://www.finra.org/Industry/Regulation/Guidance/FOR/index.htm.*

[243] *See* FINRA Rule 4210.

may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–059. 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 publicly available. All submissions should refer to File Number SR–BX–2010–059 and should be submitted on or before June 2, 2011.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

Amendment No. 2 revised the proposed rule change, as modified by Amendment No. 1, to, among other things: (1) Explain the process of reviewing companies for initial listing, including conducting background checks on companies and associated individuals, and the use of third-party investigative firms; (2) clarify the Exchange's discretionary authority to deny listing to or delist companies based on regulatory concerns; (3) add provisions relating to the internal structure and experience of those charged with oversight of the listing program; (4) describe market oversight activities for BX Venture Market-listed securities; (5) detail the use of market center identifiers to distinguish companies listed on the BX Venture Market; (6) add restrictions on ticker symbol length; and (7) clarify the consolidation of BX Venture Market data with over-the-counter information for the same securities. These amendments clarify aspects of the proposal, are responsive to commenters' concerns about investor protection and brand confusion, and strengthen the listing standards of the BX Venture Market. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[244] for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[245] that the proposed rule change (SR–BX–2010–059), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

It is further ordered that operation of the BX Venture Market is conditioned on the satisfaction of the requirements below:

A. *Market Data Display.* BX must update its global market data policy document and must enter into amended data distribution agreements to require data vendors to prominently identify the listing market for BX Venture Market-listed securities before the market begins operations. In addition, BX must represent in a letter to the staff in the Commission's Division of Trading and Markets that such policy document and agreements have been amended and that the provisions in such documents that require data vendors to prominently identify or display the listing market for BX-listed securities will be effective with respect to all vendors that distribute BX-listed securities data at the time the BX Venture Market begins operations.

B. *Regulatory Services Agreement.* Before the BX Venture Market begins operations, BX and FINRA must enter into a regulatory services agreement relating to regulatory activities to be conducted by FINRA as described above.

C. *Examination by the Commission.* BX must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it and FINRA have, adequate regulatory procedures and programs in place to effectively regulate the BX Venture Market and its listing program, and adequate procedures and programs in place to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems, before the BX Venture Market begins operations.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[246]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11610 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

[244] 15 U.S.C. 78s(b)(2).

[245] 15 U.S.C. 78s(b)(2).

[246] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64414; File No. SR–CBOE–2011–045]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

May 5, 2011.

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 April 29, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CBOE Stock Exchange ("CBSX") Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing proposes to make changes to the CBSX Fees Schedule. The first change is to eliminate the symbol "Q" from the stocks listed in footnote 3 which are subject to certain transaction fees. The symbol "Q" is being deleted because the stock is no longer available for trading on CBSX.

The Exchange also proposes to eliminate transaction fees and rebates for NBBO Step-Up Trades. Such trades were only available through CBSX's "flash" process. The Commission approved the deletion of CBSX's "flash" rule on April 6, 2011.[3] As such, the Exchange proposes to delete these now-obsolete fees from the Fees Schedule.

CBSX further proposes to modify the transaction fees for a cross trade that is the stock component of a qualified contingent trade. Currently, the fee is $.0010 per share, with a maximum rate of $20 per trade. The Exchange proposes increasing the fee to $.0012 per share and increasing the maximum rate to $25 per trade. CBSX proposes these increases in order to better recoup costs associated with such trades.

These changes will take effect on May 2, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[4] in general, and furthers the objectives of Section 6(b)(4)[5] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using Exchange facilities. CBSX proposes eliminating obsolete references to the symbol "Q" and the fees that were only applicable to the now-nonexistent "flash" process from its Fees Schedule in order to avoid investor confusion. The evasion of confusion is consistent with the objectives of Section 6(b)(5)[6] of the Act of ensuring that the rules of the Exchange are designed to perfect the mechanism of a free and open market and to protect investors and the public interest. CBSX proposes increasing transaction fees for a cross trade that is the stock component of a qualified contingent trade to provide for the equitable allocation of such fees in accordance of Section 6(b)(4)[7] of the Act. The fee will be same regardless of user, therefore ensuring that such fees are allocated equitably and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–045. 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–CBOE–2011–045 and should be submitted on or before June 2, 2011.

[3] *See* Securities Exchange Act Release No. 64200 (April 6, 2011), 76 FR 20406 (April 12, 2011) (SR–CBOE–2011–036).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] See supra note 5.

[8] This sentence was revised at the request of the Exchange. *See* e-mail from Jeff Dritz, Attorney, CBOE, to Steve Kuan, Special Counsel, Division of Trading and Markets, Commission, on May 5, 2011.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11583 Filed 5–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64415; File No. SR–Phlx–2011–56]

Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange

May 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 4, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend PHLX Rule 1064(e) to establish a Floor Qualified Contingent Cross Order ("Floor QCC Order"). The Floor QCC Order will facilitate the execution of stock/option Qualified Contingent Trades that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS ("QCT Trade Exemption").[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 24, 2011, the Commission issued an order approving SR–ISE–2010–073, a proposal by the ISE to establish a Qualified Contingent Cross ("ISE QCC Proposal"). The ISE QCC Proposal was controversial, attracting opposition from multiple exchanges including PHLX. In its comment letter on the ISE QCC Proposal, PHLX asserted that the QCC Proposal deviated from "long-held principles in the options market by permitting the crossing of orders without requiring prior exposure" and that the ISE QCC Proposal failed adequately to protect customers with orders resting on the ISE limit order book.[4]

The Commission, in a thorough and thoughtful decision, concluded that the QCC Proposal—including the lack of prior order exposure—is consistent with the Act. With respect to order exposure, the Commission stated:

While the Commission believes that order exposure is generally beneficial to options markets in that it provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets, it also has recognized that contingent trades can be "useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [italics added]" and that "[t]hose who engage in contingent trades can benefit the market as a whole by studying the relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value." As such, the Commission stated that transactions that meet the specified requirements of the NMS QCT Exemption could be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process.[5]

The Approval Order succinctly sets forth the material elements of ISE's Qualified Contingent Cross:

Thus, as modified, an ISE member effecting a trade pursuant to the NMS QCT Exemption could cross the options leg of the trade on ISE as a QCC Order immediately upon entry, without exposure, only if there are no Priority Customer orders on the Exchange's limit order book at the same price and if the order: (i) Is for at least 1,000 contracts; (ii) meets the six requirements of the NMS QCT Exemption; and (iii) is executed at a price at or between the NBBO ("Modified QCC Order"). In the Notice, ISE stated that the modifications to the Original QCC Order (*i.e.,* to prevent the execution of a QCC if there is a Priority Customer on its book and to increase the minimum size of a QCC Order) remove the appearance that such orders are trading ahead of Priority Customer orders or that the QCC Order could be used to disadvantage retail customers (citations omitted).[6]

The Exchange believes that the Commission, having considered and addressed all arguments in favor and in opposition to the QCC, has established binding precedent under which other exchanges can establish a QCC Order that is also consistent with the Act.

In keeping with that precedent, PHLX hereby proposes to add PHLX Rule 1064(e) to establish a Floor QCC Order based on the precedent of ISE's QCC Order.[7] Specifically, PHLX proposes to amend Rule 1064 to provide that a PHLX member effectuating a trade on the floor of the Exchange pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) ("QCT Exemption") can cross the options leg's of the trade on PHLX as a Floor QCC Order immediately upon entry and without order exposure if no Customer Orders [8] exist on the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006); Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

[4] *See* Letter, dated August 13, 2010, from Thomas Wittman, President, NASDAQ OMX PHLX to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission.

[5] Approval Order at p. 28 (citing to Regulation NMS QCT Exemption).

[6] *Id.* at p. 18.

[7] PHLX previously established an electronic QCC Order set forth in PHLX Rule 1080(o). *See* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–047).

[8] PHLX will reject QCC Orders that attempt to execute when any Customer orders are resting on the Exchange limit order book at the same price. ISE QCC Orders will be cancelled only when they encounter resting orders of Priority Customers. The

Exchange's order book at the same price. Floor QCC Orders will be electronically entered by a Floor Broker on the floor of the Exchange using the Floor Broker Management System and the execution will then be executed electronically. Only Floor Brokers will be permitted to enter Floor QCC Orders.

The Commission in the Approval Order carefully considered the comparison between floor-based and electronic trading, including commissioning a study by the Division of Risk, Strategy and Financial Innovation ("RiskFin Study"). The RiskFin Study and the Approval Order compare electronic trading and floor trading, the similarities between the two forms of trading, and the ability of one to replicate the other. Additionally, the Commission received comment letters from multiple floor-based exchanges that challenged the comparison that ISE drew between floor-based and electronic trading.

Despite facing direct comparisons between floor-based trading and electronic trading by multiple commenters, as well as by its own Division of RiskFin, the Commission Approval focuses on similarities between the two. On its face, the Commission Approval Order draws no distinctions and identifies no material differences between floor-based and electronic trading that would confound the comparison between cross orders executed electronically and those executed on an exchange floor. The Exchange believes that the Floor QCC Order is consistent with the requirements stated in the Approval Order and consistent with the Act. The Exchange also believes that the Commission, in writing the Approval Order assumed that QCC orders entered on the floor of an exchange that meet the requirements stated in the Approval Order are equally consistent with the Act.

The Exchange has analyzed the application to Floor QCC Orders of Section 11(a) of the Act and the rules thereunder. Section 11(a) and the rules thereunder generally prohibit members of an exchange from effecting transactions on the exchange for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless an exemption applies.[9] Section 11(a) contains multiple exemptions, including exemptions for those acting in the capacity of market makers, as odd-lot dealers, and those engaged in stabilizing conduct; there are also rule-based exemptions such as the "effect vs. execute" exception under SEC Rule 11a2–2(T) under the Act.[10]

The Exchange has in the past analyzed the application of Section 11(a) to various Exchange systems and order types.[11] In analyzing Floor QCC Orders, the Exchange has concluded that the entry and execution of Floor QCC Orders raises no novel issues under Section 11(a) and the rules thereunder from a compliance, surveillance or enforcement perspective. In other words, Exchange Floor Brokers are currently required to comply and the Exchange surveils for compliance with Section 11(a) and the rules thereunder when using Exchange systems to effect transactions using existing order types, and they will be required to comply with Section 11(a) and the rules thereunder when using the Floor QCC Order.

Nonetheless, out of an abundance of caution, the Exchange has added subsection (e)(2) which prohibits Options Floor Brokers from entering Floor QCC Orders for their own accounts, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. This modification is designed to remove even a theoretical time and place advantage available to an Options Floor Broker on the Floor of the Exchange that is reflected in the prohibitions of Section 11(a) of the Exchange Act and the rules thereunder. The Exchange is prohibiting by rule certain conduct that runs afoul of Section 11(a) and the rules thereunder, and providing both a surveillance and enforcement mechanism to promote compliance. Thus, it would be incorrect to say that the Floor QCC Order differs from the electronic QCC Order due to the Options Floor Broker's presence on the Floor.

These restrictions set forth in subsection (e)(2) do not limit in any way the obligation of Options Floor Brokers and other Exchange members to comply with Section 11(a) or the rules thereunder. For example, Options Floor Brokers cannot avoid or circumvent their obligations with respect to a Floor QCC Order that triggers a Section 11(a) obligation by transmitting that order to another Options Floor Broker or to an Exchange member off the floor of the Exchange. Likewise, Exchange members off the floor must ensure that their Floor QCC Orders comply with Section 11(a) and the rules thereunder. In both cases, Exchange members must ensure compliance with Section 11(a) and the rules thereunder, including by relying upon an exemption such as those listed above.

Additionally, to provide a mechanism for the Exchange to review whether Floor QCC Orders have been entered properly by Options Floor Brokers, the Exchange proposes to adopt proposed Rule 1064(e)(2). This provision would require Options Floor Brokers to maintain books and records demonstrating that no Floor Qualified Contingent Cross Order was entered by the Options Floor Broker in a prohibited account.[12] Any Floor Qualified Contingent Cross Order that does not have a corresponding record required by this provision would be deemed to have been entered in violation of Rule 1064(e).

Finally, the Exchange proposes to modify subsections (a), (b), and (c) of Rule 1064. These changes are designed clearly to establish that the requirements applicable to Floor QCC Orders that are set forth in subsection (e) are different from those applicable to the orders described in subsections (a), (b) and (c).

As set forth in proposed Rule 1064(e), the Floor QCC Order must: (i) Be for at least 1,000 contracts,[13] (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer ("NBBO"); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price.[14] As a result, the PHLX Floor QCC Order proposed herein satisfies all of the

Commission has previously approved the rejection of crossing transactions when there is a customer order on the book at the same price. *See, e.g.,* ISE Rule 721(a); and CBOE Rule 6.74A, Interpretations and Policies .08.

[9] *See* 15 U.S.C. 78k(a).

[10] *See* 17 CFR 240.11a2–2(T).

[11] *See, e.g.,* Securities Exchange Act Release No. 63027 (Oct. 1, 2010), 75 FR 62160 (Oct. 7, 2010) (order approving Price Improvement XL System).

[12] The Exchange System will also be programmed to require certain order entry parameters for submission of Floor QCC Orders. For example, a Floor QCC Order must include data reflecting the number of shares of stock sold/purchased in the stock leg of the QCT trade. Floor QCC Orders lacking this data will be rejected by the System. The order entry parameters will be included in the Exchange's published specifications and described in an Options Trader Alert prior to launch.

[13] In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs.

[14] While the Floor QCC would not provide exposure for price improvement for the options leg of a stock-option order, the options leg must be executed at the NBBO or better. The Commission has previously approved crossing transactions with no opportunity for price improvement. *See, e.g.,* ISE Rule 721(a) and Chicago Board Options Exchange Rule 6.74A, Interpretations and Policies .08.

requirements the Commission enumerated in the Approval Order.

The Exchange's proposal addresses the mechanics of executing the stock and options components of a net-price transaction. The Exchange believes that it is necessary that it provide members and their customers with the same trading capabilities available on other exchanges with respect to QCCs, including the change proposed herein, which would permit members to execute the options legs of their customers' large complex orders on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Sections 6(b)(5) [16] and 6(b)(8) [17]of the Act in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,[18] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions. As described in detail above, the proposed rule change is also consistent with Section 11(a) of the Act and the rules thereunder.

The statutory basis for PHLX's proposed Floor QCC Order is identical to the Commission's basis for finding that the ISE's QCC Proposal is consistent with the Act "in that it would facilitate the execution of qualified contingent trades, for which the Commission found in the Original QCT Exemption to be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process. The Floor [sic] QCC Order would provide assurance to parties to stock-option qualified contingent trades that their hedge would be maintained by allowing the options component to be executed as a clean cross." In addition, like the ISE's QCC Order, the Exchange's Floor QCC Order "is narrowly drawn to provide a limited exception to the general principle of exposure, and retains the general principle of customer priority."

PHLX's proposed Floor QCC Order promotes the same Commission goals as or more effectively, and it is as or more narrowly drawn than ISE's QCC Order. Accordingly, the Exchange believes that the proposed rule change must also be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed Floor QCC Order is a competitive response to the ISE QCC Order and similar orders adopted by other exchanges.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–56 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

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[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78k–1(a)(1)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64418; File No. SR–CHX–2011–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Treatment of Customer Orders and the Prohibition Against Trading Ahead of Customer Orders

May 6, 2011.

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 April 26, 2011, the Chicago Stock Exchange, Incorporated ("Exchange" or "CHX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article 9, Rule 17 which rule governs the treatment of customer orders and the prohibition against trading ahead of customer orders. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*), at the Exchange's Office of the Secretary, on the Commission's Web site at *http://www.sec.gov,* and in 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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Article 9, Rule 17 of its rules which governs the treatment of customer orders and prohibits a CHX Participant[5] from proprietarily trading ahead of a customer order. Specifically, this proposal includes redrafting of the customer order protection rule language and adds a number of exceptions to the rule in order to make the rule more consistent with the Financial Industry Regulatory Authority's ("FINRA") Rule 5320.

Customer Order Protection

Currently, CHX Article 9, Rule 17 states, in part, that a Participant is prohibited from trading proprietarily while the Participant personally holds or has knowledge that the Participant (or any partner, officer or director thereof) holds an unexecuted market or limit order to buy (sell) such security in the unit of trading for a customer. The proposed rule change still includes customer order protection language as it applies to unexecuted market and limit orders with the clarification of allowing a Participant, who has traded proprietarily ahead of a customer order, to immediately thereafter execute the customer order up to the size and at the same or better price at which it traded for its own account. In other words, in the event that a Participant trades ahead of an unexecuted customer order at a price that is equal to or better than the unexecuted customer order, such Participant is required to execute the customer order at the price received by the Participant or better; otherwise the Participant shall be in violation of improperly trading ahead of such customer order. The proposal also prescribes the minimum "level" of price improvement necessary for a Participant to execute an order on a proprietary basis when holding an unexecuted customer limit order. For example, for customer limit orders priced greater than or equal to $1.00, the minimum amount of price improvement required is $0.01.

The Exchange also proposes to establish that a Participant must have written procedures in place governing the execution and priority of all pending orders that is consistent with the best execution requirements of CHX Article 17, Rule 3(d) and ensure that these procedures are consistently applied.

In furtherance of ensuring customer order protection, the proposed rule change clarifies Participant obligations in handling marketable customer orders. In meeting these obligations, a Participant must make every effort to execute a marketable customer order that it receives fully and promptly. A Participant that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the Participant on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Participant and that is consistent with the terms of the orders. In the event that a Participant is holding multiple orders on both sides of the market that have not been executed, the Participant must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of the proposed rule and with the terms of the orders.

Large Orders and Institutional Accounts

In addition, the Exchange is proposing to add several exceptions to the customer order protection rule. The most notable exception is to allow Participants to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more and greater than $100,000 in value) or orders from institutional accounts as defined in this proposal as Interpretation and Policy .09 of CHX Article 9, Rule 17 (collectively referred to as "Institutional/Large-Sized Orders"). Such terms and conditions would permit the Participant to continue to trade along side or ahead of such customer orders if the customer agrees.

Specifically, under the proposed rule, a Participant would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order provided that the Participant provides clear and comprehensive written disclosure to each customer at account

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Pursuant to CHX Article 1, Rule 1(s), a "Participant" means any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under CHX Articles 16 and 17 as a Market Maker Trader or Institutional Broker Representative, respectively. A Participant shall be considered a "member" of the Exchange for purposes of the Exchange Act. If a Participant is not a natural person, the Participant may also be referred to as a "Participant Firm," but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm.

opening and annually thereafter that: (a) Discloses that the Participant may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the CHX Article 9, Rule 17 protections with respect to all or any portion of its order(s).

If a customer does not opt in to the protections with respect to all or any portion of its order(s), the Participant may reasonably conclude that such customer has consented to the Participant trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[6]

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit Participants to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the Participant documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the CHX Article 9, Rule 17 protections, a Participant may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Participant documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order.[7]

No-Knowledge Exception

The Exchange is also proposing to add a "no-knowledge" exception to its customer order protection rule. The proposed exception would allow a proprietary trading unit of a CHX Participant firm to continue trading in a proprietary capacity and at prices that would satisfy customer orders that were being held by another, separate trading unit at the Participant firm. The "no-knowledge" exception would be applicable with respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS. In order to avail itself of the "no-knowledge" exception, a Participant firm must first implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders that are held at a separate trading unit. For example, a CHX Institutional Broker[8] that conducts both a proprietary and agency brokerage business and has implemented and utilized an effective system of internal controls, the "walled off" proprietary desk(s) of such Institutional Broker would be permitted to trade at prices that would satisfy the customer orders held by the agency brokerage desk without any requirement that such proprietary executions trigger an obligation to fill pending customer orders at the same price. The "no-knowledge" exception would also apply to a Participant firm's market-making unit.

A Participant that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held as [sic] a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the Participant and the circumstances under which the Participant may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

To the extent a Participant firm structures its order handling practices in NMS stocks to "wall off" customer order flow from its proprietary/market-making desks, CHX is proposing to require the firm to disclose that fact in writing to its customers. This disclosure would include a description of the manner in which customer orders are handled and the circumstances under which the firm may trade proprietarily at prices that would satisfy a customer order. The proposed disclosure would be required at account opening and on an annual basis thereafter and may be combined with the disclosure and negative consent statement permitted in connection with the proposed Institutional/Large-Sized Order exception.

Riskless Principal Exception

The Exchange's proposal also clarifies that the obligations under this rule shall not apply to a Participant's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer), provided that the Participant: (a) Submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to CHX and (b) has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable CHX rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Participants must have supervisory systems in place that produce records that enable the Participant and CHX to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a Participant relies in claiming this exception.

ISO Exception

The filing also clarifies that a Participant shall be exempt from the obligation to execute a customer order in a manner consistent with the customer order protection rule with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS ("ISO") where the customer order is received after the Participant routed the ISO. Where a Participant routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the Participant also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

In addition, the Exchange proposes applying an exception for a firm's proprietary trade that (1) Offsets a

[6] As is always the case, customers retain the right to withdraw consent at any time. Therefore, a Participant's reasonable conclusion that a customer has consented to the Participant trading along with such customer's order is subject to further instruction and modification from the customer.

[7] While a firm relying on this or any exception must be able to proffer evidence of its eligibility for and compliance with the exception, CHX believes that when obtaining consent on an order-by-order basis, Participants must, at a minimum, document not only the terms and conditions of the order (*e.g.,* the relative price and size of the allocated order/percentage split with the customer), but also the identity of the person at the customer who approved the trade-along request. For example, the identity of the person must be noted in a manner that will enable subsequent contact with that person if a question as to the consent arises (*i.e.,* first names only, initials, and nicknames will not suffice). A trade along request would be when a CHX Participant asks to trade for his/her proprietary account while simultaneously holding and working a customer order in that same stock.

[8] Pursuant to CHX Article 1, Rule 1(n), an Institutional Broker means a member of the Exchange who is registered as an institutional broker and has satisfied all Exchange requirements to operate as an institutional broker on the Exchange.

customer odd lot order (*i.e.,* an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, Participant firms would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this rule, the definition of a "bona fide error" is as defined in SEC Regulation NMS's exemption for error correction transactions.[9]

Trading Outside Normal Market Hours

This proposal also expands the customer order protection requirements to apply at all times that a customer order is executable by the Participant, even outside the period of normal market hours. Thus, customers would have the benefit of the customer order protection rules at all times where such order is executable by the Participant firm, subject to any applicable exceptions. This exception shall apply to those Participants that accept customer orders after normal market hours.

2. Statutory Basis

CHX believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that CHX 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. CHX believes that amending its customer order protection rule as proposed, will bring it more in line with industry standards, most notably FINRA's Rule 5320, which we believe will in turn reduce the complexity of customer order protection for those firms subject to the rules of multiple trading venues. CHX also believes that changing its rule as proposed will maintain the necessary protection of customer orders without imposing any undue regulatory costs on industry participants.

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 either solicited or received.

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[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[12]

CHX will announce the implementation date of the proposed rule change in a Regulatory Notice to be issued no later than 90 days from the date of publication of notice in the **Federal Register.** Implementation of the rule will take effect no later than 90 days from the date when the Exchange issues the Regulatory Notice.

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–CHX–2011–08 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–CHX–2011–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–CHX–2011–08 and should be submitted on or before June 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy.

Secretary.

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BILLING CODE 8011–01–P

[9] Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Diversified Investors Corp. (n/k/a Diverse Holdings Corp.), Drew Resources (n/k/a Galloway Energy, Inc.), DTI Medical Corp., DTLL, Inc. (n/k/a Solstice Resorts, Inc.), and Dunn's Supply Store, Inc.

May 10, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Diversified Investors Corp. (n/k/a Diverse Holdings Corp.) because it has not filed any periodic reports since the period ended August 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Drew Resources (n/k/a Galloway Energy, Inc.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DTI Medical Corp. 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 DTLL, Inc. (n/k/a Solstice Resorts, 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 Dunn's Supply Store, Inc. because it has not filed any periodic reports since it filed a registration statement on May 31, 1996.

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. EDT on May 10, 2011, through 11:59 p.m. EDT on May 23, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–11760 Filed 5–10–11; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12547

Connecticut Disaster #CT–00021 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Connecticut, dated 05/04/2011.

Incident: Southbury Main Street Fire.

Incident Period: 02/18/2011.

Effective Date: 05/04/2011.

EIDL Loan Application Deadline Date: 02/06/2012.

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 EIDL declaration, applications for economic injury 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: New Haven.

Contiguous Counties:

Connecticut: Fairfield, Hartford, Litchfield, Middlesex.

The Interest Rates are:

	Percent
Businesses And 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 economic injury is 125470.

The State which received an EIDL Declaration #____ is Connecticut.

(Catalog of Federal Domestic Assistance Number 59002)

May 4, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11628 Filed 05/11/2011 at 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12541 and #12542]

Iowa Disaster #IA–00030

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 05/04/2011.

Incident: Severe storms and tornadoes.

Incident Period: 04/09/2011 through 04/10/2011.

Effective Date: 05/04/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

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: Monona, Pocahontas.

Contiguous Counties:

Iowa: Buena Vista, Calhoun, Clay, Crawford, Harrison, Humboldt, Ida, Kossuth, Palo Alto, Sac, Webster, Woodbury.

Nebraska: Burt, Thurston.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
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

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12541C and for economic injury is 125420.

The States which received an EIDL Declaration # are Iowa; Nebraska.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 4, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11631 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12556 and #12557]

Tennessee Disaster Number TN–00051

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1974–DR), dated 05/01/2011.

Incident: Severe storms, tornadoes, straight-line winds, and associated flooding.

Incident Period: 04/25/2011 through 04/28/2011.

Effective Date: 05/04/2011.

Physical Loan Application Deadline Date: 06/30/2011.

EIDL Loan Application Deadline Date: 02/01/2012.

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 Presidential disaster declaration for the State of Tennessee, dated 05/01/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bledsoe, Cocke, Johnson, McMinn, Monroe, Rhea.

Contiguous Counties: (Economic Injury Loans Only):

Tennessee: Blount, Cumberland, Jefferson, Loudon, Roane, Sevier, Van Buren.

North Carolina: Ashe, Avery, Cherokee, Graham, Haywood, Watauga.

Virginia: Grayson, Washington.

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. 2011–11658 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12552 and #12553]

Georgia Disaster Number GA–00032

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1973–DR), dated 04/29/2011.

Incident: Severe storms, tornadoes, straight-line winds, and associated flooding.

Incident Period: 04/27/2011 through 04/28/2011.

Effective Date: 05/03/2011.

Physical Loan Application Deadline Date: 06/28/2011.

EIDL Loan Application Deadline Date: 01/30/2012.

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 Presidential disaster declaration for the State of Georgia, dated 04/29/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Cherokee, Habersham, Newton, Upson, White.

Contiguous Counties: (Economic Injury Loans Only):

Georgia: Banks, Forsyth, Rockdale, Stephens, Taylor.

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. 2011–11660 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12513]

California Disaster #CA–00170 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment to the Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 03/31/2011.

Incident: Salmon Fishery Closure 2010 Season.

Incident Period: 04/10/2010 through 09/30/2010.

Effective Date: 05/04/2011.

EIDL Loan Application Deadline Date: 01/03/2012.

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 Administrator's economic injury disaster declaration in the State of California, dated 03/31/2011, is hereby amended to include the following areas as adversely affected by the Salmon Fishery Closure 2010 Season.

Primary Counties: Alameda, Sacramento.

Contiguous Counties: California: Amador, Contra Costa, El Dorado, Placer, San Joaquin, Sutter, Yolo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 4, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11659 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12543 and # 12544]

Louisiana Disaster # LA–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 05/04/2011.

Incident: Severe weather and a tornado.

Incident Period: 04/04/2011.

DATES: *Effective Date:* 05/04/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

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 Parish: Tensas.

Contiguous Parishes/Counties:

Louisiana, Catahoula, Concordia, Franklin, Madison,

Mississippi, Adams, Claiborne, Jefferson, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
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 12543 B and for economic injury is 12544 0.

The States which received an EIDL Declaration # are Louisiana, Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

May 4, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–11633 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12524 and #12525]

Wisconsin Disaster Number WI–00029

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 State of Wisconsin (FEMA–1966–DR), dated 04/05/2011.

Incident: Severe winter storm and snowstorm.

Incident Period: 01/31/2011 through 02/03/2011.

Effective Date: 05/03/2011.

Physical Loan Application Deadline Date: 06/06/2011.

Economic Injury (Eidl) Loan Application Deadline Date: 01/05/2012.

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 Wisconsin, dated 04/05/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Green.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–11646 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12545 and #12546]

Alabama Disaster Number AL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1971–DR), dated 04/28/2011.

Incident: Severe storms, tornadoes, straight-line winds, and flooding.

Incident Period: 04/15/2011 and continuing.

Effective Date: 05/04/2011.

Physical Loan Application Deadline Date: 06/27/2011.

Eidl Loan Application Deadline Date: 01/30/2012.

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 Presidential disaster declaration for the State of Alabama, dated 04/28/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Clarke, Perry.

Contiguous Counties: (Economic Injury Loans Only): Alabama;

Monroe.

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. 2011–11645 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12545 and #12546]

Alabama Disaster Number AL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1971–DR), dated 04/28/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/15/2011 and continuing.

Effective Date: /04/2011.

Physical Loan Application Deadline Date: 06/27/2011.

EIDL Loan Application Deadline Date: 01/30/2012.

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 Presidential disaster declaration for the State of Alabama, dated 04/28/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Chambers, Lamar, Lauderdale.

Contiguous Counties: (Economic Injury Loans Only):
Georgia: Harris, Troup.
Tennessee: Hardin, Lawrence, Wayne.

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. 2011–11630 Filed 5–11–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7429]

60-Day Notice of Proposed Information Collection: Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations, Foreign Governments.
- *Estimated Number of Respondents:* 100,000.
- *Estimated Number of Responses:* 100,000.
- *Average Hours per Response:* 10 hours.
- *Total Estimated Burden:* 1,000,000 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from May 12, 2011.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

- *E-mail: memosni@state.gov.*
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- *Fax:* 202–261–8199.

You must include the information collection title in the subject lines of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations ("ITAR," 22 CFR Parts 120–130) and Section 38 of the Arms Export Control Act (AECA). Those who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in export, temporary import, and brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years. Section 126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, within a foreign business entity, foreign governmental entity, or international organization, that is an approved or otherwise authorized end-user or consignee (including transfers to approved sub-licensees) for those defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees, directly employed by the foreign consignee or end-user. The conditions are that effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met by requiring a security clearance approved by the host nation government for its employees, or the end-user or consignee have in place a process to screen all its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities

unless specifically authorized by the consignee or end-user. Section 126.18 also provides that the technology security/clearance plan, screening records, and Non-Disclosure Agreements will be made available to DDTC or its agents for law enforcement purposes upon request.

Methodology: This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically, mail, and/or fax.

Dated: May 2, 2011.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2011–11688 Filed 5–11–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 7430]

Culturally Significant Objects Imported for Exhibition Determinations: "Picasso: Masterpieces From the Musée National Picasso, Paris"

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Picasso: Masterpieces from the Musée National Picasso, Paris," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Fine Arts Museums of San Francisco, de Young Museum, San Francisco, California, from on or about June 11, 2011, until on or about October 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–11684 Filed 5–11–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR Part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility. This revision to the current approved collection incorporates the burden for the certification of second-in-command pilot type rating, previously approved under the separate OMB control number 2120–0693. This is being done for the purpose of consolidation under a single OMB control number.

DATES: Written comments should be submitted by July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0021.

Title: Certification: Pilots and Flight Instructors.

Form Numbers: FAA form 8710–1.

Type of Review: Revision of an information collection.

Background: Title 14 of the Code of Federal Regulations part 61 (14 CFR part 61) Certification: Pilots, Flight Instructors, and Ground Instructors prescribes minimum standards and requirements for the issuance of airman certificates, and they establish procedures for applying for airman certificates. The Airman certificate and/or Rating Application form and the required records, logbooks and statements required by the federal regulations are submitted to Federal Aviation Administration (FAA) Flight Standards District Offices or its representatives to determine qualifications of the applicant for issuance of a pilot or instructor certificate, or rating or authorization.

Respondents: 148,000 pilots, flight instructors, and ground instructors.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2.15 hours.

Estimated Total Annual Burden: 303,160 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 5, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–11579 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This rule revised the airport certification regulations and establishes

certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats. The changes to 14 CFR Part 139 resulted in additional information collections from respondents.

DATES: Written comments should be submitted by July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0675.

Title: Certification of Airports, 14 CFR part 139.

Form Numbers: FAA Form 5280–1.

Type of Review: Renewal of an information collection.

Background: Information collection requirements contained in the final rule is used by the FAA to determine an airport operator's compliance with part 139 safety and operational requirements, and to assist airport personnel to perform duties required under the proposed regulation.

Respondents: Approximately 600 airport operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 22 hours.

Estimated Total Annual Burden: 52,993 hours.

ADDRESSES: *Send comments to the FAA at the following address:* Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 5, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–300.

[FR Doc. 2011–11586 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Assessment for a Proposed Airport Traffic Control Tower and Base Building, University of Illinois Willard Airport, Savoy, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Draft Environmental Assessment for a Proposed Airport Traffic Control Tower and Base Building, University of Illinois Willard Airport, Savoy, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) proposes to fund, construct, and operate a new Airport Traffic Control Tower (ATCT) and Base Building at the University of Illinois Willard Airport (CMI), Savoy, Illinois. The FAA's preferred alternative is to construct the ATCT at a location on the east central portion of CMI. The purpose and need of the proposed project is to enhance visibility and improve safety of airport movement areas, have the capability to meet existing and future operational and administrative expansion requirements, and improve operational efficiency of the facility because the current ATCT facility is a non-standard design of insufficient height and size.

The FAA has prepared a Draft Environmental Assessment (DEA) in conformance with the requirements of the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The DEA analyzes the potential environmental impacts that may result from construction and operation of the proposed new ATCT and Base Building at the proposed site, as well as the no action alternative (i.e., not constructing and operating the new ATCT). As part of the proposed project, the DEA also analyzes the potential environmental impacts that may result from replacement and operation of an instrument landing system antenna; and the upgrade and operation of a Very High Frequency Omnidirectional Range with Tactical Air Navigation (VORTAC) facility. The DEA is available for public review during a 30–day public comment period at the following libraries: Champaign Public Library, 200 W Green St., Champaign, IL 61820; Tolono Public Library, 111 E. Main, Tolono, IL 61880.

ADDRESSES: The FAA will accept written comments on the DEA until close of business on June 22, 2011. Comments on the DEA may be sent to: Ms. Virginia Marcks, FAA, AJW–C14D, 2300 East Devon Ave., Des Plaines, IL 60018, fax 847–294–7698, e-mail *virginia.marcks@faa.gov.* Copies of the Draft EA on compact disk may be obtained by contacting Ms. Virginia Marcks. Comments received on the DEA during the public comment period will be addressed in the Final Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. *Telephone number:* 847–294–7494. *E-mail: virginia.marcks@faa.gov.*

Issued in Des Plaines, Illinois, May 6, 2011.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–C14D, Central Service Area.

[FR Doc. 2011–11696 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held May 26, 2011 from 12 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Colson Board Room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome And Introductions).
- Review/Approve Summary of March 17, 2011 PMC meeting, RTCA Paper No. 085–11/PMC–889.
- Publication Consideration/Approval.
- Final Draft, Report—*Assessment of the LightSquared Ancillary Terrestrial Component Radio Frequency Interference Impact on GNSS L1 Band*

Airborne Receiver Operations, prepared by SC–159.
- Other Business.
- Document Production and PMC Meeting Schedule.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 6, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–11575 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty-Fifth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held May 26, 2011, from 9 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., NBAA—McIntosh and ATA—Hilton Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

Plenary Session

May 26, 2011

- Chairman's Introductory Remarks.
- Approval of Summary of the Eighty-Fourth Meeting held February 11, 2011, RTCA Paper No. 082–11/SC159–991.
- Review/Approval of Proposed Final Report—*Assessement of the LightSquared Ancillary Terrestrial Component Radio Frequency Interference Impact on GNSS L1 Band Airborne Receiver Operations.*
- Other Business.
- Date and Place of Next Meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 6, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–11577 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting—RTCA Special Committee 217: Joint With EUROCAE WG–44 Terrain and Airport Mapping Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

DATES: The meeting will be held June 6–10, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at NASA Ames Research Center, Moffett Field, Mountain View, CA 94043. For more information contact John Kasten at *john.kasten@jeppesen.com,* (303) 328–4535 (office), (303) 260–9652 (mobile) or alternate contact Tom Evans at *e.t.evans@nasa.gov,* (757) 864–2499 (office).

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases meeting. The agenda will include:

June 6, 2011

- Opening Plenary Session
- Chairman's remarks and Introductions
- Housekeeping
- Approve minutes from previous meeting
- TOR update
- Review and Approve Meeting Agenda
- Schedule for this week
- FRAC
- Comment Resolution of Documents: Revised DO–272B and DO–291A

June 7–8, 2011

- Continue FRAC
- Comment Resolution of Documents: Revised DO–272B and DO–291A

June 9, 2011

- Consider for Approval Revised DO–272B and Revised DO–291A
- Consider/Approve FRAC Drafts for PMC Consideration—Revised DO–272B, User Requirements for Aerodrome Mapping Information and Revised DO–291A, Interchange Standards for Terrain, Obstacle, and Aerodrome Mapping Data. Revised RTCA DO272B is maintained as RTCA Paper No. 077–11/SC217–023, Revised RTCA DO/291A is maintained as RTCA Paper No. 078–11/SC217–024.
- Working Group Sessions—Work Items for DO–276
- Work Items for DO–XXX, ASRN V&V Document
- Editorial Working Group Session to clean documents as a result of FRAC of Revised DO–272B and Revised DO–291A

June 10, 2011

- Road Map for DO–272 and DO–291
- Assignment and Review of Future Work
- Other Business
- Date and Place of Next Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 6, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–11578 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Wireless Innovation for Transportation; Request for Information

AGENCY: Research and Innovative Technology Administration (RITA), U.S. Department of Transportation (USDOT).

ACTION: Notice.

SUMMARY: This notice is a Request for Information (RFI) and comments that will be used to help identify research and development (R&D) opportunities for wireless technology in surface transportation. The President's Wireless Infrastructure and Innovation Initiative includes a proposed $100M R&D investment to spur innovative wireless applications in surface transportation that advance the Administration's safety, mobility, and environmental sustainability agenda. Feedback and comments on any aspect of the RFI are welcomed from all interested public, private, and academic entities, and individuals. While all feedback is welcomed, the USDOT is particularly interested in feedback on the questions provided in the last section of this RFI.

RFI Guidelines: Responses to this RFI must be submitted by June 13, 2011. Responses to this RFI should be delivered electronically as an e-mail or as an attachment to an e-mail sent to *winits@dot.gov.*

Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract, to issue a grant or cooperative agreement, or to make any other funding or partnership commitment. Information obtained as a result of this RFI may be used by the government for program planning. If you wish to submit any information under a claim of confidentiality, you should submit via email to the address given below under **FOR FURTHER INFORMATION CONTACT**, your complete submission, including the information you claim to be confidential commercial information. When you submit information containing information identified as confidential commercial information, you should include a cover letter setting forth the reasons you believe the information qualifies as "confidential commercial information." (49 CFR 7.13(c)(4) and 7.17) If we receive a request to examine or copy this information, we will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552), but we will process the request in accordance with the procedures found in 49 CFR 7.17.

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, please contact Mr. John Augustine, Intelligent Transportation Systems Joint Program Office (ITS JPO), 202–366–9536, *john.augustine@dot.gov.* For legal questions or issues, please contact Robert Monniere, RITA, 202–366–5498, *Robert.Monniere@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for RITA are generally from 8 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, except Federal holidays. Additional information about the USDOT's planned work under the Wireless Innovation and Infrastructure Initiative is at *http://www.dot.gov/budget/2012/budgetestimates/rita.pdf* and *http://www.rita.dot.gov/publications/budget_estimates/fy2012/html/detailed_justification_for_its_wireless.html.*

SUPPLEMENTARY INFORMATION: In February, 2011, President Obama announced the Wireless Innovation and Infrastructure Initiative. (*http://www.whitehouse.gov/sites/default/files/microsites/ostp/Wi3-fs.pdf).*

As part of this initiative, a total of $3 billion raised from voluntary spectrum incentive auctions would be used to create a Wireless Innovation (WIN) Fund. This fund would aim to catalyze innovation by funding research and development of emerging broadband wireless technologies and applications. The WIN fund is intended to advance economic growth and competitiveness by supporting the nationwide rollout of the next generation broadband cellular (*e.g.* 4G) technologies, supporting development of new applications that leverage that rollout, and paving the way for other new technologies that result in accelerated benefits to the American people. Overall, the fund will support basic research, experimentation and testbeds, as well as applied development areas such as public safety, education, energy, health, economic development, and transportation. The transportation portion of the WIN Fund, which will focus on initiatives above and beyond the existing core Intelligent Transportation Systems (ITS) programs at USDOT, will provide an additional $100 million in funding over a five year period to create an ITS Wireless Innovation for Transportation program. This RFI seeks to obtain public input regarding the optimal use of the WIN funding to expedite the investment, development, deployment and use of broadband wireless applications to address our nation's transportation needs.

Broadband wireless systems consist of several different classes of technology. The most commonly thought of is a wide area, potentially ubiquitous coverage systems such as cellular, including for example, 4th generation cellular or "4G." However, fixed or mobile local-area coverage such as Wi-Fi, as well as fixed point-to-point, and point-to-multipoint wireless systems may all be used either individually or together to achieve the goal of providing broadband access to all Americans and a platform for innovation. Several complementary technologies may be used for each class of system. This RFI focuses on mobile wireless broadband technologies and applications for surface transportation, including both wide area and local area systems.

Wireless Innovation for Transportation—Program Description

The Wireless Innovation for Transportation Program (WIN for Transportation) will provide the USDOT's ITS Program and its stakeholders the ability to seek new and innovative opportunities to pursue ground-breaking research and development toward deployment of wireless technology applications. It will develop and demonstrate innovative wireless transportation applications that deliver safety, mobility, emergency response, energy, and/or environmental benefits to both passenger, fleet and freight transportation systems. The WIN for Transportation program compliments and builds upon the USDOT's ongoing ITS research program (*http://www.its.dot.gov*), but will be funded separately from the existing ITS Program. It is proposed that the WIN for Transportation program will:

- Use "living laboratories" in a competitively-selected region or corridor where innovative broadband wireless communications methods and applications can be safely evaluated in an operating environment. These living laboratories will leverage other public and private investments.
- Create broadband wireless "fast lanes" for multi-modal transportation applications such as real-time safety inspections, reporting, and access nationwide, including in underserved rural areas and at border crossings.

• Work with state inspection and public safety partners, along with other Federal agencies, to deploy rural wireless access points in areas of critical need for enhanced emergency communications.

• Require that all applications discourage distracted driving/operations and uncover advances that can work to reduce driver workload.

The USDOT has issued this RFI to help determine the most promising technologies and applications to pursue. Responders are reminded that feedback or comments on any aspect of this notice are welcomed from all interested public, private, and academic entities and individuals. While all feedback is encouraged, the USDOT is particularly interested in feedback on the following questions. Respondents may respond, to some, all, or none of these specific questions. Each question should be considered in the context of whether or not investment of all or part of the five year, $100 million Wireless Innovation for Transportation funding would provide incentives for innovation toward realization of substantial new service and public benefits and/or substantially accelerate the accrual of such benefits.

1. The Federal Communications Commission (FCC)'s *National Broadband Plan* and the President's Wireless Innovation and Infrastructure Initiative jointly aim to provide broadband access to 98% of all Americans within five years. Providing coverage for citizens and businesses accessing the Internet may be very different than providing coverage for surface transportation applications. For example, there may be rural highway rail intersections, border crossings in lightly populated areas, or roads over mountain passes that experience severe weather that would benefit from ITS applications.

a. What types of rural and sparsely populated locations and what applications would benefit from this type of broadband deployment?

b. What research is needed for techniques such as Machine-to-Machine (M2M) communications that would be needed to implement these applications?

c. What research is needed on alternative broadband approaches other than cellular that may be either more suitable or more cost-effective to deploy broadband mobile wireless in these areas?

2. The overall Wireless Innovation and Infrastructure Initiative has provisions for accelerating the implementation of a nationwide interoperable broadband public safety network. This network would be based on LTE (Long Term Evolution) cellular technology, be built to public safety reliability specifications (public safety grade) and would be capable of transmitting voice, video, images, and multimedia communications. Both public transit (including transit police) and highway maintenance and incident response personnel are eligible to use public safety networks.

a. What ITS applications could be enabled on these networks that cannot be implemented on the existing public safety narrowband radio systems transportation agencies and organizations currently use?

b. If a nationwide public safety broadband network were implemented allowing state departments of transportation (DOTs), public transit properties, and first responders to use broadband interoperable communications equipment, what new ITS applications, operations, and procedures could be implemented for emergency response, coordination with first responders, and disaster response?

c. How might such a network be used to coordinate emergency operations such as evacuations with local, State, and Federal law enforcement and emergency response personnel?

3. The growing use of alternative fuel vehicles brings new challenges. What innovative broadband wireless applications would support the use of alternative fuel vehicles? For example, traveler information is traditionally based on shortest route or fastest route. For alternative fuel vehicles, it may be more important to consider additional parameters such as real time routing based on High-Occupancy Vehicle (HOV) lanes open to alternative fuel vehicles, exemption of alternative fuel vehicles from tolls, authorizing access of alternative fuel vehicles into restricted-access, environmentally-sensitive areas (*e.g.,* "nonattainment areas" as defined by U.S Environmental Protection agency, National Parks, National Monuments, *etc.*), special corridors (such as the "Hydrogen Highway" in California), the range of the vehicle, vertical terrain, and the location of potential stations supporting the alternative fuel source. What unique challenges are faced by alternative fuel vehicles, and what mobile broadband-based applications might best address them?

4. In addition to addressing the unique challenges facing alternative fuel vehicles, how can the WIN for Transportation program help address issues related to reducing the use of non-renewable fuels and to reducing greenhouse gas emissions from transportation vehicles? What specific research and development areas might be undertaken with these reductions in mind? For example, how could innovative wireless broadband technology be used to monitor unnecessary idling of commercial vehicles, such as idling that does not occur at an intersection, stop sign, or at a bus stop and does not occur for power-take-off?

5. How would the provision of open, real-time, anonymous traffic and travel condition data via wireless broadband significantly increase opportunities for entrepreneurs to develop innovative transportation applications, as the provision of public, standardized transit schedule data has done in cities across the U.S.?

6. Next generation broadband systems are expected to have efficient means of implementing Machine-to-Machine (M2M) communications. One example is using embedded modules (small self-contained units with integrated sensor and communications functions) in vehicles to provide information on road, weather, or environmental conditions to traffic management centers or other centralized entities, in a manner transparent to the driver. In this regard, applications using M2M would meet the USDOT objectives concerning distracted driving.

a. What emerging ITS applications would benefit from M2M?

b. What applications could be prototyped or tested in a "living laboratory"?

7. What new commercial vehicle, fleet, rail, or transit safety applications or new methods for operations, based on the availability of broadband wireless that could substantially reduce the cost and improve the quality of regulated commercial vehicle applications? How might such applications be implemented? Which ones might be possible candidates for integration and testing in the near term? Considerations might include:

a. Wireless "fast lanes" supporting real-time safety inspections, reporting, and information access, including at border crossings and in rural areas. Real-time multi-agency access to information at rural and mobile inspection points nationwide could dramatically transform the way freight and motorcoach safety is implemented. The types of information could include carrier and or operator inspection and enforcement data as well as critical safety and lading information (documents issued by a carrier to a shipper, acknowledging that specified goods have been received).

b. Development and implementation of a standardized, secure freight/hazardous materials electronic manifest system.

c. Continuous automated safety monitoring with periodic reporting via broadband wireless, without the use of roadside inspection stations.

d. Cross-agency access to standardized vehicle and operator data for enhanced data sharing and improved mission effectiveness.

8. How might a future commercial broadband service address connected vehicle applications: (*http://www.its.dot.gov/connected_vehicle/connected_vehicle_apps.htm*), and what action could the USDOT take to ensure that industry addresses these requirements? For example:

a. What is required from a commercial broadband service in terms of reliability and resilience to ensure it would be available during emergencies and disasters to support transportation services?

b. What technologies such as mesh or ad-hoc networking or innovative use of relays, femtocells (which are small base stations attached to a fixed broadband connection), or Wi-Fi access points could be used to demonstrate an increase in network resilience for transportation applications?

c. What such applications, technologies and techniques might be prototyped and tested in a "living laboratory" over the next five years?

9. Security standards may need to incorporate techniques to provide anonymity and defeat tracking attempts against individual drivers when using connected vehicle applications or global positioning systems (GPS). Commercial broadband networks are designed to provide location information for emergency response (E911 and NG911) and are increasingly implementing applications using location-based services that specifically track user and/or vehicle locations. These features might limit the suitability of commercial broadband networks for some applications, especially those that may be potentially mandatory and/or government-sponsored

a. What types of ITS applications, especially those that may be potentially mandatory or government-sponsored, might make use of commercial broadband networks?

b. What policy initiatives and possible technical features will need to be implemented to assure users that their privacy is protected regardless of which communications network (or networks) is used?

10. What actions should the USDOT take, either from a technical or policy perspective, to encourage development of integrated, multi-platform wireless devices *(e.g.* Dedicated Short Range Communications (DSRC)/4G) for vehicles, mobile devices, and roadside equipment?

11. What other broadband technologies or applications would provide substantial public benefits and testing or deployment of which would be accelerated by WIN funding?

12. Security standards for vehicle-to-vehicle and vehicle-to-infrastructure communications may require techniques for authenticating messages, including verifying the authority to send various classes of messages and the source of the messages. They may also include techniques to encrypt messages if needed.

a. What transportation applications might require such security features when implemented on commercial networks, and what attributes might the applications require (for example, authentication, data integrity, non-repudiation, *etc.*)?

b. Could widespread broadband wireless capability be leveraged to address the security requirements transportation and/or other non-transportation applications?

Issued in Washington, DC, on the 5th day of May 2011.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2011–11653 Filed 5–11–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Certain Asset Transfers to a Tax Exempt Entity.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of this regulation 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.*

SUPPLEMENTARY INFORMATION:

Title: Certain Asset Transfers to a Tax-Exempt Entity.

OMB Number: 1545–1633.

Regulation Project Number: REG–209121–89, T.D. 8802.

Abstract: The written representation requested from a tax-exempt entity in regulations section 1.337(d)–4(b)(1)(A) concerns its plans to use assets received from a taxable corporation in a taxable unrelated trade or business. The taxable corporation is not taxable on gain if the assets are used in a taxable unrelated trade or business.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 125.

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: April 28, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11587 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8842

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 8842, Election To Use Different Annualization Periods for Corporate Estimated Tax.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger (202) 927–9368, 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: Election to Use Different Annualization Periods for Corporate Estimated Tax.

OMB Number: 1545–1409.

Form Number: 8842.

Abstract: Form 8842 is used by corporations, tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period under Internal Revenue Code section 6655(e)(2)(C)(i) or (ii) for purposes of figuring the corporation's estimated tax payments under the annualized income installment method.

Current Actions: There are no changes being made to the Form 8842 at this time.

Type of Review: Extension of a current OMB approval.

Affected Public: Business, or other for-profit organizations.

Estimated Number of Respondents: 1,700.

Estimated Time per Respondent: 2 hrs., 33 min.

Estimated Total Annual Burden Hours: 4,335.

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: May 4, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11599 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Amortizable Bond Premium.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Amortizable Bond Premium.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95, T.D. 8746.

Abstract: This regulation addresses the tax treatment of bond premium. The regulation provides that a holder may make an election to amortize bond premium by offsetting interest income with bond premium, and the holder must attach a statement to their tax return providing certain information. The regulation also provides that a taxpayer may receive automatic consent to change its method of accounting for premium provided the taxpayer attaches a statement to its tax return. The information requested is necessary for

the IRS to determine whether an issuer or a holder has changed its method of accounting for premium.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 7,500.

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: May 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11598 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS soliciting comments concerning information collection requirements related to Capital Gains, Partnership, Subchapter S, and Trusts Provisions.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Capital Gains, Partnership, Subchapter S, and Trusts Provisions.

OMB Number: 1545–1654.

Regulation Project Number: REG–106527–98 (TD 8902).

Abstract: The regulation relates to sales, or exchanges of interests in partnerships, S corporations, and trusts. The regulations interpret the look-through provision of section 1(h), added by section 311 of the Taxpayer Relief Act of 1997 and amended by sections 5001 and 6005(d) of the Internal Revenue Service Restructuring and Return Act of 1998, and explain the rules relating to the division of the holding period of a partnership interest. The regulations affect partnerships, partners, S corporations, S corporation shareholders, trusts, and trusts beneficiaries.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Businesses or other for-profit organizations, and state, local or tribal governments.

The burden estimates for requirement is reflected in the burden estimates for: Form 1040, U.S. Individual Income Tax Return; Form 1065, U.S. Partnership Return of Income; Form 1041, U.S. Income Tax Return for Estates and Trusts; and Form 1120S, U.S. Income Tax Return for an S Corporation.

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: May 5, 2011.

Yvette B.Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11588 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Joel Goldberger, (202) 927–9368, 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: Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: T.D. 8851.

Abstract: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with significant interests in foreign partnerships to ensure the correct reporting of items with respect to these interests.

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, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

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: May 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11590 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Continuation Coverage Requirements Application to Group Health Plans.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Joel Goldberger, (202) 927–9368, 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: Continuation Coverage Requirements Application to Group Health Plans.

OMB Number: 1545–1581.

Regulation Project Number: REG–209485–86 (TD8812).

Abstract: The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

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, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

The estimated time per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Estimated Total Annual Burden Hours: 404,640.

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: April 26, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11591 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection related to Private Foundation Disclosure Rules.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of regulations should be directed to Joel Goldberger (202) 927–9368, 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: Private Foundation Disclosure Rules.

OMB Number: 1545–1655. *Regulation Project Number:* REG–121946–98. T.D. 8861.

Abstract: The regulations relate to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information return available for public inspection and to comply with requests for copies of those documents.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,065.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 32,596.

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: May 6, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11593 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection related to Limitations on Corporate Net Operating Loss.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1381.

Regulation Project Number: T.D. 8546.

Abstract: This document contains final income tax regulations providing rules for allocating net operating loss or taxable income, and net capital loss or gain, within the taxable year in which a loss corporation has an ownership change under section 382 of the Internal Revenue Code of 1986. These regulations permit the loss corporation to elect to allocate these amounts between the period ending on the change date and the period beginning on the day after the change date as if its books were closed on the change date.

Current Actions: There is no change to this regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 0.1 hours.

Estimated Total Annual Burden Hours: 200.

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: May 4, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11594 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation 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.*

SUPPLEMENTARY INFORMATION:

Title: Deductions and Reductions In Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

OMB Number: 1545–1393.

Regulation Project Number: EE–14–81.

Abstract: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. The information required by the regulation will be used by the IRS to administer section 404A of the Internal Revenue Code and to accurately determine the correct deductions and reductions in earnings and profits attributable to deferred compensation plans maintained by foreign subsidiaries and foreign branches of domestic corporations.

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: 1,250.

Estimated Time per Respondent: 508 hours.

Estimated Total Annual Burden Hours: 634,450.

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: May 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11595 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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)). The IRS is soliciting comments concerning information collection requirements related to Simplification of Entity Classification Rules.

DATES: Written comments should be received on or before July 11, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Simplification of Entity Classification Rules.

OMB Number: 1545–1486.

Regulation Project Number: REG–209793–95 (TD 8697).

Abstract: This regulation provides rules to allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The election is made by filing Form 8832, Entity Classification Election. The information collected on the election will be used to verify the classification of electing organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Businesses or other for-profit organizations, and state, local or tribal governments.

The burden for the collection of information in this regulation is reflected in the burden estimates of Form 8832.

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: May 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–11596 Filed 5–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–61: OTS Nos. 07212]

American Eagle Savings Bank, Boothwyn, PA; Approval of Conversion Application

Notice is hereby given that on May 3, 2011, the Office of Thrift Supervision approved the application of American Eagle Savings Bank, Boothwyn, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 5, 2011.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2011–11439 Filed 5–11–11; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL REGISTER

Vol. 76 Thursday,

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Mountain Plover as Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2010–0038; MO 92210–0–0008–B2]

RIN 1018–AX26

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Mountain Plover as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our decision to withdraw the proposed listing of the mountain plover (*Charadrius montanus*) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we have determined that the species is not endangered or threatened throughout all or a significant portion of its range. We make this determination because threats to the species as identified in the proposed rule are not as significant as earlier believed and currently available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

DATES: The December 5, 2002 (67 FR 72396), proposal to list the mountain plover as a threatened species is withdrawn as of May 12, 2011.

ADDRESSES: This finding is available for viewing on the Internet at *http://www.regulations.gov* (see Docket No. FWS–R6–ES–2010–0038) and *http://www.fws.gov/mountain-prairie/species/birds/mountainplover* and also by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Office, 134 Union Boulevard, Suite 670, Lakewood, CO 80225; telephone 303–236–4773; facsimile 303–236–4005. Please submit any new information, materials, comments or questions concerning this finding to the Colorado Ecological Services Field Office at P.O. Box 25486, DFC (MS 65412), Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

For a detailed description of Federal actions concerning the mountain plover, please refer to the February 16, 1999, proposed rule to list the species (64 FR 7587); the December 5, 2002, proposed rule to list the species with a special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) (67 FR 72396); and the September 9, 2003, withdrawal of the proposed rule to list the species (68 FR 53083).

The document we published on September 9, 2003 (68 FR 53083), withdrew the entire proposed rule we published on December 5, 2002 (67 FR 72396), including our proposal to list the mountain plover as a threatened species and our proposed special 4(d) rule. The September 9, 2003, document also addressed comments we received on both the 1999 and 2002 proposals to list the mountain plover and summarized threat factors affecting the species. The withdrawal of the proposed rule was based on our conclusion that the threats to the mountain plover identified in the proposed rule were not as significant as previously believed and that currently available data did not indicate that threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, were likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

On November 16, 2006, Forest Guardians (now WildEarth Guardians) and the Biological Conservation Alliance filed a complaint in the District Court for the Southern District of California challenging the September 9, 2003, withdrawal of the proposal to list the mountain plover (68 FR 53083). We entered into a settlement agreement with the plaintiffs, which was filed by the court on August 28, 2009. As part of the settlement agreement, we agreed to reconsider our decision to withdraw the proposed listing of the mountain plover and to submit to the **Federal Register** by July 31, 2010, a document reopening the December 5, 2002, proposal to list the mountain plover (67 FR 72396) that would also request public comments. We agreed to vacate our 2003 withdrawal of the proposed rule upon publication of the **Federal Register** notice reopening public comment on the December 5, 2002, proposal to list the mountain plover (67 FR 72396). We further agreed to submit a final listing determination for the mountain plover to the **Federal Register** no later than May 1, 2011.

On June 29, 2010, we published a document in the **Federal Register** notifying the public that we were reinstating that portion of our December 5, 2002, proposed rule to list the mountain plover as threatened under the Act (75 FR 37353). We did not reinstate that portion of the December 5, 2002, proposed rule regarding a proposed special rule under section 4(d) of the Act. The proposed special rule was designed to allow researchers to complete field research and analyze data for an ongoing study, and addressed agricultural activities only through December 31, 2004. To ensure that our review of the species' status was complete and based on the best available scientific and commercial information, we requested comments on the proposal to list the mountain plover as a threatened species, including all information related to the species' status and the proposed listing. We invited public comments on the proposed listing, new information relevant to our consideration of the status of the mountain plover, and comments and information regarding threats to the species and its habitat.

Species Information

Our February 16, 1999, and December 5, 2002, proposed rules (64 FR 7587 and 67 FR 72396, respectively), and our September 9, 2003, withdrawal of our 2002 proposal to list the mountain plover (68 FR 53083) described the species' life history, ecology, and habitat use. For additional background on the natural history of the mountain plover, see the account of the species in *The Birds of North America* (Knopf and Wunder 2006).

While the majority of relevant information directly pertaining to the mountain plover that has become available since our December 5, 2002, proposal to list (67 FR 72396) and September 9, 2003, withdrawal of that proposal (68 FR 53083) has resulted from local or Statewide studies on the mountain plover's breeding range; two recent documents provide extensive review of current knowledge regarding the mountain plover:

(1) Mountain Plover (*Charadrius montanus*) in *Birds of North America* (Knopf and Wunder 2006); and

(2) Conservation Plan for the Mountain Plover (*Charadrius montanus*), Version 1.0 (Andres and Stone 2009).

Numerous other recent documents are summarized in our June 29, 2010, notification reinstating our December 5, 2002, proposed rule to list the mountain plover as threatened under the Act (75 FR 37353). These include over twenty peer-reviewed journal articles, and many other reports and summaries relevant to the status of the mountain plover that have become available since 2002.

The following sections highlight and update information on the mountain plover with emphasis on information developed since 2002.

Taxonomy and Species Description

The mountain plover (*Charadius montanus*) is a small bird in the order Charadriiformes, family Charadriidae. No subspecies are recognized. It is a migratory, terrestrial shorebird averaging 8 inches (21 centimeters) in body length. Mountain plover are light brown above and white below, but lack the contrasting dark breast band characteristic of several other plovers such as the more common killdeer (*C. vociferus*). Sexes are similar in appearance.

Feeding Habits

Mountain plover feed on ground-dwelling invertebrates and flying invertebrates found on the ground, primarily beetles, crickets, and ants. They forage with a series of short runs and stops, feeding opportunistically as they encounter prey (Knopf and Wunder 2006, unpaginated).

Breeding

Mountain plover return north to their breeding sites in the western Great Plains and Rocky Mountain States in spring. They arrive at their breeding grounds in northeastern Colorado in late March (Graul 1975, p. 6). Arrival is earlier farther south and later in Montana and at higher elevations in South Park, Colorado (Knopf and Wunder 2006). Mountain plover are territorial during the breeding season, with males defending territories shortly after arrival (Knopf and Wunder 2006). Mountain plover are generally monogamous; they form pairs and begin courtship on arrival at their breeding grounds. Nests consist of a simple ground scrape. Egg laying in northeastern Colorado begins in late April and extends through mid-June (Graul 1975, p. 7). Graul (1973, p. 84) described mountain plover nesting as a "rapid multi-clutch system." The female normally produces two clutches, typically three eggs each, at different nest sites; the male incubates the first nest site while the female incubates the second. If the first nest or brood is lost early in the breeding season, the adult may renest, so each pair can potentially make four attempts per year to raise a brood. This breeding system may increase breeding success given predation that occurs on mountain plover nests or broods. This breeding system, rare among bird species, may result in greater reproductive potential than in other shorebirds (Knopf and Wunder 2006). It may have developed in response to food fluctuations that typically occur in the shortgrass prairie, where insect populations likely fluctuate in response to annual, seasonal, and local fluctuations in precipitation (Graul 1973, p. 85).

Average incubation period is 29 days (Graul 1975, p. 19). Chicks leave the nest within hours of hatching and obtain their own food. Only one adult normally tends each nest and brood. The minimum habitat requirement for mountain plover broods in Montana was 70 acres (ac) (28 hectares (ha)) (Knopf and Rupert 1996, p. 33), and brood home ranges averaged 143 ac (57 ha) on rangeland in Colorado (Knopf and Rupert 1996, p. 31). Brood home ranges appeared similar for three Colorado landscapes (Dreitz and Knopf 2007, p. 129). Parents stay with chicks until they fledge, which occurs at about 33 to 34 days (Graul 1975, p. 25). Mountain plover breed their first spring and every year thereafter (Knopf and Wunder 2006).

Habitat and Range

Although often thought of as a grassland species, the mountain plover may best be described as a species of disturbed prairie or semi-desert habitat (Knopf and Miller 1994, p. 505). They are found on open, flat lands including xeric (extremely dry) shrublands, shortgrass prairie, barren agricultural fields, and other sparsely vegetated areas. On grasslands, they often inhabit areas with a history of disturbance by burrowing rodents such as prairie dogs (*Cynomys* spp.), native herbivores, or domestic livestock.

Mountain plover breed from Canada (extreme southern Alberta and Saskatchewan) to northern Mexico (Figure 1) with greatest apparent numbers in Colorado and Wyoming, and substantial numbers in Montana, New Mexico, and Nebraska. In Mexico, breeding populations are suspected in the States of Chihuahua, Cohuila, and Nuevo Leon (Andres and Stone 2009, p. 9).

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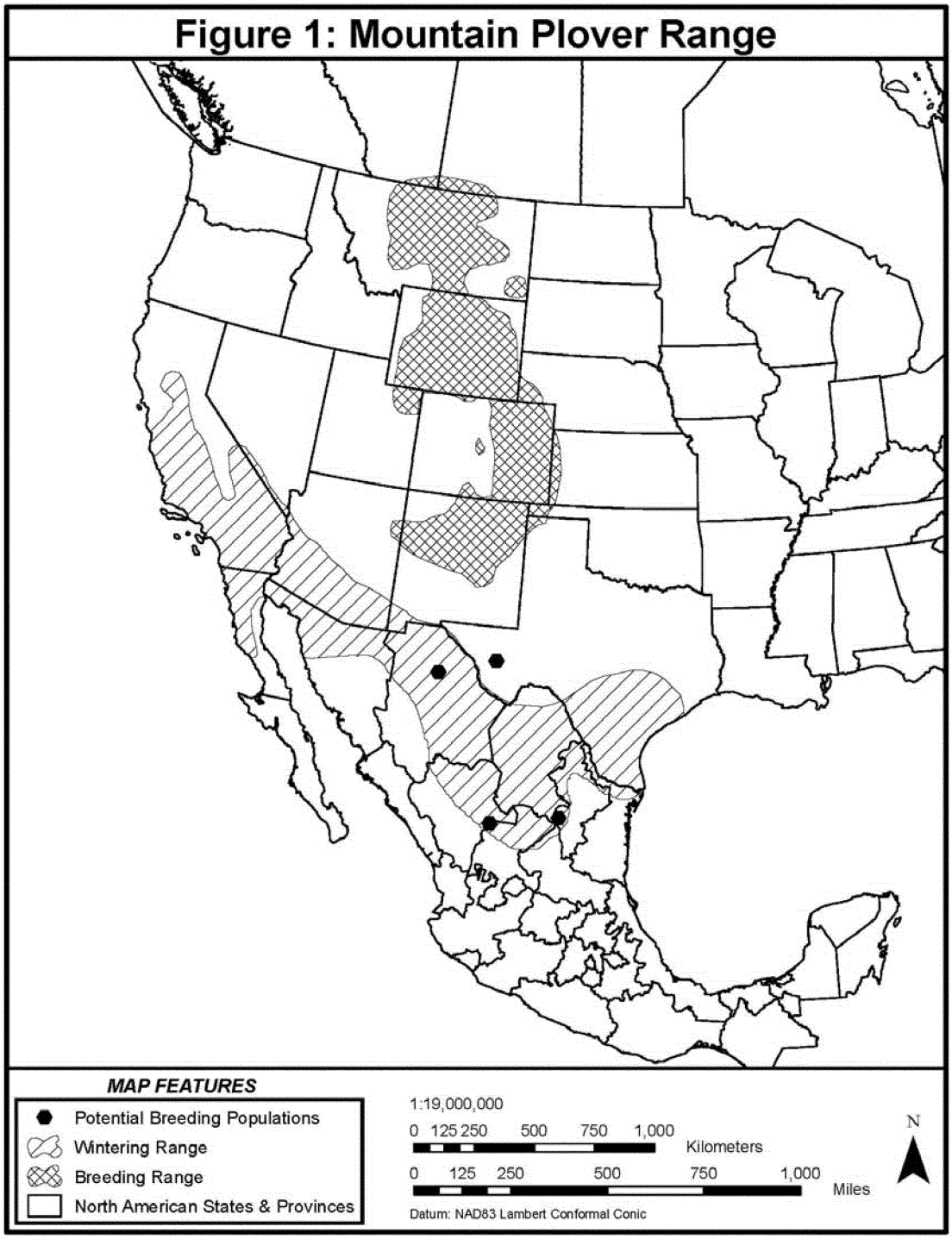

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Mountain plover winter in similar habitat, many in California, but also in southern portions of Arizona, Nevada, New Mexico, Texas, and in northern Mexico. While California's Sacramento, San Joaquin, and Imperial Valleys support the greatest documented concentrations of wintering mountain plover, relatively little is known about wintering numbers or distribution in other areas.

Breeding Habitat

Common elements of mountain plover breeding habitat include short vegetation, bare ground, and flat topography. The mountain plover historically nested in a region impacted by a variety of herbivores, including prairie dogs, bison (*Bison bison*), and pronghorn antelope (*Antilocapra americana*), because these heavily grazed or similarly disturbed landscapes support reduced height and density of vegetation, creating favorable breeding habitat for mountain plover. While the mountain plover is categorized as a shorebird, it is seldom found near margins of freshwater or marine estuaries. Dinsmore (2003, pp. 14–17) described four types of breeding habitat: Short- and mixed-grass prairie, prairie dog colonies, agricultural lands, and semi-desert.

On the plains, the mountain plover is generally considered an associate of the shortgrass prairie, dominated by blue grama (*Bouteloua gracilis*) and buffalo grass (*Buchloe dactyloides*) (Knopf and Miller 1994, p. 504). In the Pawnee National Grasslands (PNG) in northern Weld County, Colorado, an area that formerly supported the greatest known concentration of breeding mountain plover, breeding habitat was described as restricted to flat, heavily grazed areas (Graul 1973, p. 69). Native prairie grasslands formerly presented a diverse ecosystem, shaped by low precipitation, grazing, and fire. Today, prairie landscapes often consist of grassland fragments where current cattle grazing practices tend to create relatively uniform grass coverage and height, which is not beneficial to mountain plover (Knopf 2008, pp. 55–57). Typical range management practices such as rotational grazing, limited grazing, and improving soil moisture are designed to promote taller grasses that limit mountain plover use. Within these landscapes, areas of cattle concentration (loafing areas and near water), disturbance caused by prairie dogs, and plowed or fallow (unseeded for one or more seasons) agricultural fields create conditions favorable for mountain plover nesting (Knopf and Wunder 2006). Mountain plover are also attracted to burned areas in their breeding grounds, and burning may be valuable as a habitat management tool (Knopf 2008, pp. 25–26, 57–58, 61; Andres and Stone 2009, p. 34).

Prairie dog colonies create important habitat for mountain plover, and are especially important to maintaining mountain plover populations in the northern portions of their range (Dinsmore *et al.* 2003, pp. 1024–1025; Dinsmore *et al.* 2005, p. 1552; Augustine *et al.* 2008, unpaginated; Childers and Dinsmore 2008, p. 705; Tipton *et al.* 2009, pp. 496–497; Dreitz 2009, pp. 875–877). Active prairie dog colonies provide exposed soils around burrows and, because prairie dogs keep surrounding vegetation clipped, an area of low-growing, perennial vegetation that is suitable as mountain plover breeding and brood-rearing habitat. In addition, prairie dogs give alarm calls in response to the approach of predators and may alert mountain plover to predator presence. The density of mountain plover was found to be much greater on black-tailed prairie dog (*C. ludovicianus*) colonies than on other habitats in Montana (Childers and Dinsmore 2008, pp. 705–706). In north-central Montana, the size of the adult mountain plover population closely tracked annual changes in the area occupied by black-tailed prairie dogs (Dinsmore *et al.* 2003, p. 1024). Both prairie dog and mountain plover numbers declined sharply in the mid-1990s in response to an outbreak of sylvatic plague, which caused deaths of prairie dogs and resultant loss of favored mountain plover habitat. Mountain plover later increased in concert with subsequent increases in prairie dogs (Dinsmore *et al.* 2005, pp. 1550–1552).

In the Colorado shortgrass prairie ecosystem, mountain plover densities observed on black-tailed prairie dog colonies were higher than those on dryland agriculture and much higher than those on grasslands without prairie dogs (Dreitz *et al.* 2006, p. 702; Tipton *et al.* 2009, p. 496). Mountain plover were significantly more abundant on black-tailed prairie dog colonies than on other rangeland within a bison pasture in northeastern New Mexico (Groguen 2010, pers. comm.). Prairie dog colonies occupied by mountain plover were, on average, larger in size than colonies with no mountain plover. In Utah, mountain plover nested in proximity to white-tailed prairie dog (*C. leucurus*) colonies (Manning and White 2001, p. 226). In northeastern Mexico, breeding mountain plover were associated with Mexican prairie dog (*C. mexicanus*) colonies (Gonzales-Rojas *et al.* 2006, p. 82).

Mountain plover have been found to regularly use fallow or plowed agricultural fields for nesting (Shackford *et al.* 1999, entire; Dreitz and Knopf 2007, pp. 684–685; Bly *et al.* 2008, p. 127; McConnell *et al.* 2009, pp. 30–33). Where mountain plover have an opportunity to choose between agriculture and prairie, they may use both equally (Knopf and Rupert 1999, p. 84). Shackford *et al.* (1999, entire) found mountain plover nesting on cultivated fields in Colorado, Oklahoma, Kansas, and Wyoming. Fifty percent of all nests they encountered during their research were on fallow or bare fields. While many nests were destroyed by farm machinery, they concluded that mountain plover were using cultivated fields successfully for nesting, especially in southern portions of the species' range (Shackford *et al.* 1999, p. 117).

Recent studies addressed the mountain plover's nesting ecology, and attempted to identify the extent of breeding distribution and population size in Nebraska (Bly *et al.* 2008). They encountered 272 nests on agricultural fields of cultivated wheat and millet (Bly *et al.* 2008, p.123). Studies in Oklahoma encountered mountain plover on bare agricultural fields (90 percent of observations), with few (5 percent of observations) associated with prairie dog towns (McConnell *et al.* 2009, pp. 31–32).

It remains unknown whether Texas or Mexico crop fields support mountain plover breeding (Andres and Stone 2009, p. 24). Holliday (2010) reported that breeding season sightings of mountain plover from the Texas Panhandle tended to be in cultivated fields as in adjacent Oklahoma, although previously reported nesting in West Texas was in grazed, short-grass habitat.

Knopf and Wunder (2006) described mountain plover as breeding "more predictably" at semi-desert locations west of the shortgrass prairie in Colorado, Wyoming, and Montana. Beauvais and Smith (2003, entire) developed a model of mountain plover breeding habitat in shrub-steppe habitat of western Wyoming. They related favored patches of mountain plover breeding habitat to poor soils, low precipitation, and wind scour, features they predicted would persist over time, especially on public lands. In such habitats, mountain plover are less dependent on prairie dog colonies to create breeding habitat. A Wyoming study located 55 mountain plover nests in grassland or desert scrub habitat in six counties (Plumb *et al.* 2005a, p. 225). All nest sites were grazed by ungulates with prairie dogs present at only 36 percent of nest sites, mostly in grassland (Plumb *et al.* 2005a, pp. 226–227). In Montana, Childers and Dinsmore (2008, p. 107) noted that sparsely vegetated, hardpan clay flats provided nesting habitat.

In summary, mountain plover require short vegetation with some bare ground on their breeding sites. In grasslands, this usually requires disturbance, such as that provided by prairie dogs, cattle grazing, fire, or farming. In semi-desert environments, breeding habitat may persist without these forms of disturbance.

Migration and Wintering Habitat

Southbound migration of mountain plover is prolonged, with post-breeding flocks numbering in the hundreds forming in late June with some remaining on breeding areas until September or October (Bly *et al.* 2008, p. 123; Andres and Stone 2009, p. 10). Mountain plover migrate southward across the southern Great Plains in late summer and early fall to Texas, New Mexico, and Mexico, with many then traveling west to California (Knopf and Wunder 2006). During spring migration, mountain plover move from their

wintering sites in early March and proceed quickly to breeding sites in eastern Colorado by mid-March and in Montana by mid-April (Knopf and Wunder 2006). Mountain plover are generally thought to use habitats similar to those on the breeding and wintering grounds during migration. During migration, they have also been reported using alkaline or mud soils, and sod farms (Knopf and Wunder 2006). Few studies have been conducted on stopover habitat, and little is known about stopover ecology or food resources exploited (Andres and Stone 2009, pp. 14, 21, 37).

In winter, mountain plover use habitats similar to those on their breeding grounds. Mountain plover are found wintering in California mostly on fallow and cultivated agricultural fields, but also on grasslands and grazed pastures (Hunting *et al.* 2001, p. 39; Knopf and Wunder 2006).

Throughout the Central Valley of California, the field types used by mountain plover vary seasonally, from uncultivated lands in October and November, shifting toward cultivated lands over the winter (Hunting and Edson 2008, pp. 183–184). Mountain plover wintering in the San Joaquin Valley of California used tilled fields, grazed pastures, alkali flats, and burned fields, but they preferred native valley sink scrub (low vegetation dominated by alkali-tolerant shrubs) and nonnative grazed or burned grasslands over any of the more common cultivated land types (Knopf and Rupert 1995, pp. 747–749). Winter habitat availability in California's Carrizo Plain seems linked to a combination of livestock grazing and precipitation, with heavy grazing and dry conditions creating conditions most favorable to the mountain plover. Giant kangaroo rat (*Dipodomys ingens*) precincts (colonies) are also used, especially when wet years produce tall vegetation elsewhere (Sharum 2010, pers. comm.).

Mountain plover exclusively used cultivated sites in the Imperial Valley of California (Wunder and Knopf 2003, pp. 74–75). While cultivated lands are abundant throughout the Imperial Valley, not all provide suitable feeding habitat. Mountain plover were found to favor irrigated farmland, including burned bermudagrass (*Cynodan dactylon*); harvested, grazed, or sprouting alfalfa (*Medicago spp.*) fields; and newly cultivated fields (Wunder and Knopf 2003, pp. 75–76; AMEC Earth and Environment 2003, p. 12). Fallow fields were used mostly for roosting, and melon and vegetable fields were rarely or never used (Wunder and Knopf 2003, pp. 75–76). Insect availability, furrow depth, size of dirt clods, and the vegetation on contiguous land parcels were all believed to influence the suitability of agricultural fields to mountain plover.

In California, annual climatic variability, especially abundant rainfall, influences field conditions and can reduce mountain plover use of traditionally occupied wintering sites. For example, mountain plover became virtually absent from cultivated fields in the Imperial Valley during the rainy winter of 2004–2005 (Knopf and Wunder 2006). Movement patterns of wintering mountain plover in California are shown to be highly variable, with birds on several occasions moving more than 34 miles (mi) (55 kilometers (km)) in a week (Knopf and Wunder 2006).

In Arizona, mountain plover winter on sod farms and grazed pastures, and are observed using the same sites yearly. Their use of farm fields and other potential habitats is generally unknown, and these areas are rarely surveyed (Robertson 2010, p. 1). A few mountain plover have wintered in recent years on mowed grasses at Gila Bend Air Force Auxiliary Field (Mendelsohn 2010).

In Texas, winter reports of mountain plover were correlated with barren fields and grazed pastures (Holliday 2010). In Williamson and Bell Counties, Texas, mountain plover winter only on large, flat, plowed fields, especially those with some corn or sorghum stubble (Fennel 2002, p. 29). In the Texas coastal bend area (Nueces and San Patricio Counties), wintering plover are largely limited to plowed fields rather than grasslands or fallow fields, with mountain plover often following tractors while feeding (Cobb 2009, pers. comm.). Wintering mountain plover in Texas have also been reported using burned fields (Knopf and Wunder 2006), sod farms (Cobb 2011, pers. comm.), coastal prairies, and alkaline flats (Andres and Stone 2009, p. 12).

In Mexico, mountain plover are found wintering in grassland areas with high densities of prairie dogs (both black-tailed and Mexican) and on heavily grazed pastures (Andres and Stone 2009, p. 12; Macias-Duarte and Panjabi 2010, pp. 5, 7). Consistent with other areas, open habitat with low grass cover and sparse or no shrub cover are elements common to areas used by mountain plover in Mexico. However, significant mountain plover use of crop fields in Mexico has not been reported (Macias-Duarte and Punjabi 2010, p. 7).

Wunder (2007) studied geographic population structure in mountain plover through color-banding and stable isotope concentrations in feathers. He concluded that there is widespread mixing of mountain plover populations in winter and that birds may use alternate wintering sites in different years (Wunder 2007, p. 118). While mountain plover appear annually at some favored wintering sites, site fidelity by individual birds appears low. Mountain plover can move long distances and use various sites even within a given winter.

Survival, Lifespan, and Site Fidelity

A long-term study on mountain plover breeding grounds in Phillips County, Montana, provides much of what is known regarding population dynamics of the species. The annual survival rate of adult mountain plover of both sexes in Phillips County ranged from 0.74 to 0.96 yearly (Dinsmore 2008, p. 50). The annual survival rate for juvenile mountain plover (survival to 1 year of age) was 0.06 at hatching, but for those chicks that reached fledging age was 0.62 (Dinsmore 2008, p. 51). Survival estimates did not account for permanent emigration (birds surviving but returning in subsequent years to sites outside of the study area), so the actual annual survival may have been higher.

Previous estimates of survival rates and of estimated mean lifespan of 1.92 years (Dinsmore *et al.* 2003, pp. 1020–1021) supported our December 5, 2002, conclusion that the mountain plover had a shorter lifespan than other plovers (*Charadriidae*) (67 FR 72397) and that this might impact its opportunity to reproduce. These conclusions underestimated adult mountain plover survival. The longer study of the same population over years with varying weather and habitat conditions modified the earlier conclusions regarding the mountain plover's longevity. Mountain plover of 5 to 7 years of age were frequently encountered, and a longevity record over 10 years was established (Dinsmore 2008, p. 52). Based on this additional research, survival rates for mountain plover appear comparable to those reported for other plovers, and the mountain plover is now considered a relatively long-lived species (Dinsmore *et al.* 2010, unpaginated). We no longer believe that the mountain plover's lifespan is a liability that could contribute to the negative impact of natural or manmade events affecting the species.

Mountain plover have a high nest survival rate compared to other ground-nesting species (Dinsmore *et al.* 2010), but nest success in mountain plover has varied greatly from study to study. Successful hatching (of at least one egg) ranged from 26 percent (Knopf and

Rupert 1996, pp. 29–30) to 65 percent (Graul 1975, p. 18). Dinsmore *et al.* (2002, pp. 3485–3486) found differences in nest success between nests incubated by males (49 percent) and females (33 percent). Dreitz and Knopf (2007, p. 684) found nest success of 37 percent with no appreciable difference between nests on agricultural fields and on native rangeland.

There have been relatively few studies of chick survival (hatching to fledging) and results vary greatly. Dreitz (2009, p. 6) estimated that 30-day survival of chicks of mountain plover from prairie dog colony nesting habitat was 75 percent, and that 30-day survival on other grasslands and on agricultural fields was less than 25 percent. Following similar methodology, research on crop fields in Nebraska found 95 percent survival of chicks accompanying 31 adult mountain plover that were radio-tracked for the 36 days after eggs hatched (Blakesley and Jorgensen 2010). Radio contact was lost with other adults (due to birds leaving the area or transmitter failure), but even if assuming all chicks associated with these adults perished, chick survival was at least 58 percent (Blakesley and Jorgensen 2010). Dreitz *et al.* (2010) studied post-hatching chick survival (hatching to fledging) via radio-tracking in Colorado and Montana. The study targeted factors affecting survival, including landscape characteristics, with an objective of informing conservation and management efforts. Field studies in 2010 were hampered by unusually cold and wet weather. Of 93 chicks radio-tracked over three habitat types in Colorado, only 9 were confirmed to survive to 30 days (Dreitz *et al.* 2010, p. 3). Thirty-eight confirmed mortalities included 13 from avian predators, 8 from mammalian predators, and 17 from unknown predation, weather, and undetermined factors. Contact with other chicks was lost, and their fates were unknown. Results did not reflect higher chick survival on prairie dog towns than on other grasslands or agricultural fields. In Montana, only 1 of 39 chicks monitored on black-tailed prairie dog colonies was confirmed to survive to 30 days. Nineteen mortalities were documented, with 13 from heavy rains (Dreitz *et al.* 2010, p. 4). Sources of mortality differed among habitats in Colorado, with avian predation higher at black-tailed prairie dog towns (Dreitz *et al.* 2010, p. 6). However, results of the study are considered preliminary, and future work is planned.

Few studies have estimated seasonal adult survival rates. Dreitz (2010, unpaginated) found 89 percent survival of adults with broods for the 30 days after hatching. A study of overwintering mountain plover in California showed nearly 95 percent survival of wintering birds from November 1 to March 15 (Knopf and Rupert 1995, p. 746). Since survival of adults during stationary periods is believed to be relatively high, and there is no estimate for adult survival during spring and fall migration, there is potential that losses of adults during migration may be significant and efforts to increase adult survival might be focused on migration periods (Dinsmore *et al.* 2003, p. 1023; Andres and Stone 2009, p. 1; Dinsmore *et al.* 2010). However, there is no scientific information available to indicate that high mortality during migration is occurring.

A life stage-specific model based on data from three breeding areas, two in Colorado and one in Montana, found that mean adult survival was the parameter that most influenced modeled population growth (Dinsmore *et al.* 2010). The importance of adult survival was characterized as typical of long-lived bird species, for which repeated reproductive attempts throughout life are less important to population growth, as evidenced by low chick survival, than adult survival (Dinsmore *et al.* 2010). Nest survival was comparable to, or higher than, other ground-nesting shorebirds and was less important to population growth than survival of chicks, juveniles, and adults. Large variation in estimates of chick survival led to the conclusion that to improve population viability on breeding areas, management to increase chick survival should be a priority. The authors believed such management should be emphasized over past efforts to decrease nest losses and increase hatching success (Dinsmore *et al.* 2010). However, the authors conceded that management to improve chick survival is more difficult than improving hatching success and might require large-scale habitat improvement.

Mountain plover were thought to have high site fidelity to nesting locations, returning to same area where they hatched each year (Graul 1973, p. 71). Skrade and Dinsmore (2010, p. 672) quantified mountain plover dispersal on breeding sites in Montana and reported juvenile (natal) dispersal (hatching year to return at age 1) averaged 8.1 mi (13.0 km) for males and 6.3 mi (10.2 km) for females. Only 4 of 38 banded chicks returning as adults arrived back at the same black-tailed prairie dog colony where they were banded. Knopf and Wunder (2006) noted a chick that had dispersed over 30 mi (50 km) in Colorado.

The previous year's nesting success influences adult dispersal; unsuccessful adults disperse farther than successfully breeding adults (Skrade and Dinsmore 2010, p. 671). While adults rarely move far from the area where they nested the previous year, evidence of potential for year-to-year dispersal in adults is exemplified by an adult mountain plover banded on a breeding area in Colorado in 2009, that was found nesting approximately 25 mi (40 km) away in Nebraska in 2010 (Bly 2010b, pers. comm.).

Results from genetic studies suggest that gene flow among breeding areas is sufficient to offset genetic effects of small populations and reported adult fidelity to breeding areas (Oyler-McCance *et al.* 2008, pp. 496–497).

Population Size and Trends

Mountain plover are difficult to detect because they are cryptically colored and in general are widely distributed at low densities (Knopf and Wunder 2006). Based on historical observations of mountain plover and extensive habitat changes, there is general agreement that the mountain plover is currently greatly reduced in numbers and range compared to their numbers and range prior to European settlement (Graul and Webster 1976, p. 265; Knopf and Wunder 2006). The mountain plover's historical breeding range is believed to have differed from that currently occupied primarily in its eastern extent, which may have encompassed the western thirds of North Dakota, South Dakota, and Nebraska, and more of western Kansas and the Texas Panhandle than is currently occupied (Graul and Webster 1976, p. 265, Knopf and Wunder 2008).

Population estimates for the species, both historical and recent, appear imprecise. Graul and Webster (1976, p. 266) estimated that mountain plover populations in Montana, Wyoming, eastern Colorado, and New Mexico then totaled 214,200 to 319,220 birds, with 20,820 in the population stronghold of Weld County, Colorado. However, Knopf and Wunder (2008) cited Graul (pers. comm.) as saying that the estimates may have been off (*i.e.,* high) by an order of magnitude (a factor of 10).

Knopf (1996, p. 12) estimated the total population of mountain plover to be about 8,000 to 10,000, based on a 1994 wintering survey in California and on assumptions regarding proportion of the wintering population observed (*i.e.,* that only half of birds wintering in California had been counted and that 1,000 to 3,000 birds wintered in Texas and other areas). We cited this estimate in our

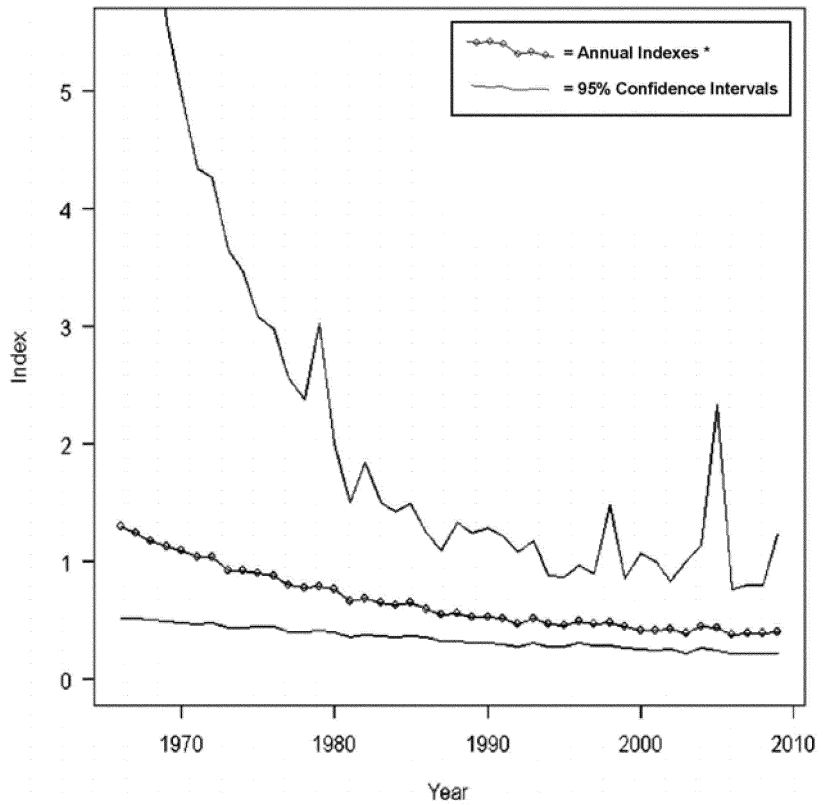
December 5, 2002, proposed rule (67 FR 72396). In our September 9, 2003, withdrawal of our proposed listing (68 FR 53083), we again cited the Knopf estimate above and, using similar assumptions and newer California winter survey data (1998–2002), provided a rangewide estimate of 5,000 to 11,000 mountain plover. More recent studies, which estimated populations present on specific portions of the breeding range, have resulted in a higher rangewide estimate of the mountain plover breeding population. After investigating Wyoming populations, Plumb *et al.* (2005b, p. 15) estimated a minimum of 3,393 mountain plover in Wyoming (up from previous estimates of 500 to 1,500) and estimated a rangewide total of 11,000 to 14,000 mountain plover. Based on newer information, including an upward revision of estimated mountain plover numbers on the eastern Colorado plains (a conservative estimate of 8,577 birds), Tipton *et al.* (2009, p. 497) provided a rangewide estimate of 15,000 to 20,000 mountain plover. Andres and Stone (2009, p. 8) reviewed available data and provided a coarse, minimum rangewide estimate of 18,000 breeding mountain plover. Knopf and Dreitz (*in press*) concluded that the continental breeding population is "certainly larger" than the 17,500 birds estimated in Montana, Wyoming, and Colorado, citing small populations in contiguous States, a potentially significant population in New Mexico, and an unknown population in Mexico. Based on our review of recent data, including those from Nebraska (Van der Berg *et al.* 2010) and New Mexico (see Breeding Range below), we estimate that the current rangewide mountain plover breeding population exceeds 20,000 birds. This was supported by Knopf (2009, pers. comm.). We have no information to indicate that this estimate reflects an actual increase in rangewide mountain plover numbers over previous, lower estimates. Instead, it likely reflects the limitations of those earlier rangewide estimates (based on mountain plover wintering in California that largely discounted birds wintering elsewhere) and more accurate recent estimates of breeding populations.

Accurate trend information for mountain plover numbers is generally lacking. Interpreting trends from the two long standing surveys, the Breeding Bird Survey (BBS) and the National Audubon Society's Christmas Bird Count (CBC), suffer from a variety of problems, including the inherent difficulties associated with using a survey of only a small portion of a total population to infer rangewide trends (Knopf and Wunder 2004, p. 1).

The BBS is a large-scale survey of North American birds that began in 1966, and is conducted during the breeding season by observers driving along roads over established routes. Knopf (1996, p. 12) cited BBS data from 1966 through 1993 as indicative of a steep decline in mountain plover numbers across their breeding range (3.7 percent per year, a decline of approximately two-thirds over the period). However, Knopf and Wunder (2004, p. 1) suggested that the timing of surveys (which occur mostly in June when mountain plover are less conspicuous) and the low densities at which mountain plover occur prevent reliable trend estimates.

Based on recent BBS data analysis (Sauer 2010a), the mountain plover has declined rangewide at an estimated rate of 2.6 percent per year for the period from 1966 to 2009 (95 percent confidence interval (CI) −6.7 to +0.6). However, for the period from 1999 through 2009, the estimated rate of decline decreased to 1.1 percent per year (95 percent CI −5.8, +9.6) (Figure 2). While neither estimate varies statistically from a stable population (at a 95 percent CI), the probability that the estimated long-term trend (1966 through 2009) is less than or equal to zero is 95 percent. The probability that the estimated short-term trend (1999 through 2009) is less than or equal to zero is 68 percent. The estimated long-term decline is consistent with the generally accepted conclusion that the mountain plover's rangewide population is currently smaller than it was in the 1960s. The more recent (1999 through 2009) estimated decline and associated CI lead us to conclude that most or all of the long-term decrease took place before 1999, that any recent declines are modest, and that the mountain plover population may be near stable.

Figure 2: Rangewide Population Index for the Mountain Plover



Based on rangewide Breeding Bird Survey Data (Sauer 2010a)

* Annual indexes are modeled composite population estimates scaled to the population level of a typical breeding bird survey route.

Sauer (2011, pers. comm.) concluded that limited regional data from the BBS (*i.e.,* the low numbers of routes reporting the species and low numbers of mountain plover observed) resulted in imprecise trend estimates within individual States and for the time periods of interest. He also concluded that BBS data only provide an imprecise summary of mountain plover population dynamics, and the limited sample size likely reflects the limitations of the roadside sampling frame in sampling mountain plover breeding populations.

We conclude that, while the BBS is the only long-term trend information available for the mountain plover on its breeding range, it is an imprecise indicator of mountain plover population trends. Given the wide confidence interval and the conclusion by Sauer (2011, pers. comm.) above, the data provide limited support for any recent (1999 through 2009) trend in mountain plover numbers. Even so, we acknowledge that this is the best available information on trends for this species and BBS survey results suggest a recent (1999 through 2009) moderated rate of decline (Figure 2). We provide long-term and recent BBS trend estimates for three States where the sample size allowed for analysis (see Conservation Status and Local Populations below), but with the same reservations regarding precision.

The CBC is an annual count performed around the end of December in which volunteers observe birds in 15-mi (24-km) radius count circles. While CBCs can be used to infer species population trends, spatial coverage is limited (Knopf and Wunder 2004, p. 1) and established count circles commonly coincide with populated areas where volunteers are available. The CBC data estimated an annual decrease of 2.8 percent in mountain plover observed from 1966 through 2007, but reliability was described as low (Butcher and Niven 2007, Appendix 1).

The vast majority of mountain plover reported in CBCs come from California and, within California, from the South Salton Sea count. Pandolfino (2009, unpaginated) submitted his analysis of CBC data for California and recognized the data's limitations, but concluded that the data reflected long-term and recent declines in mountain plover numbers wintering in California. The CBC data on mountain plover numbers is highly variable from year to year. The Salton Sea South CBC, the only CBC in the Imperial Valley, is limited in scope and does not include portions of the valley where most mountain plover have been seen (Wunder and Knopf 2003, p. 76). Inherent limitations in data collection methods (volunteers surveying small areas relative to total winter range) and lack of sufficient detections of mountain plover in California count circles (Hunting *et al.* 2001, p. 40) render trend analysis uncertain. CBC data from other States and Mexico is even less representative

of wintering populations and provides no insight into possible trends for the mountain plover.

We conclude, based on observations across the mountain plover's range and BBS trend data, that a historical decline of the mountain plover has occurred since the 1960s. However, we agree with the conclusion of Andres and Stone (2009, p. 3) that precise and accurate information on recent trends in mountain plover numbers is lacking. The recent (1999 through 2009) decline estimate from BBS data is modest (1.1 percent per year) and any difference from a stable population estimate (slope of 0.0) is statistically insignificant. However, we acknowledge that the BBS data is the best available information on trends for the mountain plover and that BBS results suggest a recent (1999 through 2009) moderated rate of decline (Figure 2). The CBC wintering data are highly variable and come mostly from California, but also suggest a long-term decline. No comprehensive trend data across the mountain plover's wintering range are available. The discussion below provides information on populations and trends within States, Canada, and Mexico, where available.

Conservation Status and Local Populations

The mountain plover is listed as endangered in Canada, as a sensitive species in Alberta, and as a threatened species in Mexico (Andres and Stone 2009, p. 13; Gober 2010). The mountain plover is identified by the Service as a Bird of Conservation Concern (Service 2008), is considered "highly imperiled" in the U.S. Shorebird Conservation Plan (2004, p. 2), a category assigned to species listed as threatened or endangered nationally, and all species with significant population declines and either low populations or some other high risk factor. It is also identified as "G3-vulnerable" by NatureServe (2010). The species is listed as a sensitive species by the U.S. Forest Service (USFS) (2010) and by the Bureau of Land Management (BLM) (2000a, 2006, 2010a). It is identified as a species of global conservation concern in the American Bird Conservancy and National Audubon Watchlist, and it is listed as "near threatened" by the International Union for the Conservation of Nature (IUCN) (BirdLife International 2010). The designations discussed above may, in part, reflect population estimates at the time those designations were established. The IUCN previously (from 2004 to 2007) listed the species as "vulnerable," a higher level of concern than "near threatened," but changed its rating as higher rangewide population estimates emerged. The U.S. Shorebird Conservation Plan provided a rangewide estimate of 9,000 mountain plover until 2006, when the estimate was revised upward to 12,500 (Morrison *et al.* 2006, p. 69).

All States within the range of the mountain plover have included the species in their Comprehensive Wildlife Conservation Strategy or Wildlife Action Plans or both (State Plans) (Arizona Game and Fish Department 2006; University of California 2005; Colorado Division of Wildlife 2006; Wasson *et al.* 2005; Montana Fish, Wildlife and Parks 2005; Schneider *et al.* 2005; New Mexico Department of Game and Fish 2006; Oklahoma Department of Wildlife Conservation 2005; Texas Parks and Wildlife 2005; Wyoming Game and Fish Department 2005) as either "Species of concern" or "Species of greatest conservation need." Each State categorizes species under these designations based on available information about the status, distribution, and trend of the species in their State. They are not regulatory classifications, but rather are intended to guide resource managers in making proactive decisions regarding species conservation and data collection priorities. The State Plans are not intended to be specific action plans for any species. These designations do not result in any protection for the species. However, the mountain plover is identified as threatened in the State of Nebraska, the only State where the species is listed as endangered or threatened.

Breeding Range

Colorado

In Eastern Colorado, the shortgrass prairie ecosystem provides flat, dry breeding habitat for the mountain plover. The species occupies grasslands within prairie dog colonies, grasslands without prairie dog colonies, and dry land agricultural fields (Dreitz *et al.* 2005, pp. 129–130; Tipton *et al.* 2009, p. 496).

Knopf and Miller (1994, p. 504) noted the PNG, Weld County, Colorado, as a breeding stronghold for the species, but in the mid-1990s the population fell dramatically. The PNG now supports relatively few breeding mountain plover. In 2009, Knopf provided an overview of mountain plover studies on the PNG from 1986 through 2007. He suggested that mountain plover numbers on the PNG had been in decline since the late 1930s and early 1940s, and that the dramatic decline in the mid-1990s was the abrupt endpoint of a process of deteriorating habitat, exacerbated by other factors such as wet spring weather, increased predation, and the relocation of breeding mountain plover to better habitats elsewhere (Knopf 2008, p. 61).

Despite the virtual loss of the PNG population, over half of all mountain plover are thought to breed in Colorado (Andres and Stone 2009, p. 15). A recent study reported a conservative estimate of 8,577 breeding mountain plover in eastern Colorado (95 percent CI 7,511 to 35,130) (Tipton *et al.* 2009, p. 497). A separate, higher elevation population in South Park, Park County, Colorado, was estimated at 2,310 adults (Wunder *et al.* 2003, p. 661). Surveys through 2006 suggested a stable population in South Park, with any variation largely attributable to wet years and dry years affecting breeding conditions (Wunder 2010a). Small numbers of mountain plover also occur in Colorado's San Luis Valley (Hicks-Anderson and VerCauteren 2006, entire). Andres and Stone (2009, p. 8) provided population estimates for the United States, Canadian provinces, and Mexican States based on their review of all available information. Their estimate of 11,000 mountain plover breeding in Colorado appears appropriate given information available.

The BBS data from Colorado, 1966 through 2009 (−0.9 percent decline annually, 95 percent CI (−7.0 to 3.5)) and 1999 through 2009 (0.3 percent increase annually, 95 percent CI (−5.5 to 14.7)) (Sauer 2010a), suggest little long-term or recent change in breeding numbers in Colorado. Based on these data, we conclude that the current breeding population in Colorado, which likely supports half or more of all breeding mountain plover, is relatively stable.

Wyoming

Wyoming has the highest estimated number of breeding mountain plover outside of Colorado. The mountain plover is locally common and has been detected in every county of Wyoming (Smith and Keinath 2004, p. 3). A projected 20.5 million ac (8.3 million ha) of mountain plover habitat exists in Wyoming, with 59 percent occurring on public lands (Wyoming Natural Diversity Database (WYNDD) 2010; Emmerich 2010).

Nesting of mountain plover in Wyoming occurs in both grassland, mostly in the eastern part of the State, and desert-shrub (Plumb *et al.* 2005b, p. 20). Mountain plover densities were comparable across habitat types with overall density only slightly higher in grassland than in desert-shrub (Plumb *et*

al. 2005b, p. 20). Mountain plover appear to have less association with prairie dog habitat in Wyoming than elsewhere (Plumb *et al.* 2005a, p. 226). Little of the mountain plover breeding range in Wyoming (approximately 12 percent) is on cropland Knopf and Rupert 1999, p. 85).

Plumb *et al.* (2005b, pp. 19–20) estimated a minimum population of 3,393 mountain plover in Wyoming in 2002 and 2003. Andres and Stone (2009, p. 8) provide an estimate of 3,400 mountain plover breeding in Wyoming. This number is based on Plumb *et al.*'s estimate and, like that estimate, it reflects the minimum number likely present. Given that Plumb *et al.* (2005b, pp. 19–20) provided a conservative estimate, the actual breeding population is likely larger; however, we have no basis to provide a more accurate estimate.

The BBS data from Wyoming (Sauer 2010a), 1966 through 2009 (−1.2 percent decline annually, 95 percent CI (−5.7 to 3.3)) and 1999 through 2009 (−2.3 percent decline annually, 95 percent CI −13.9 to 4.5)), suggest that both long-term and recent declines in breeding mountain plover numbers in Wyoming may have occurred.

Montana

Primary breeding habitat for mountain plover in Montana is in the north-central portion of the State where mountain plover are highly dependent on black-tailed prairie dog colonies for habitat. Montana Fish, Wildlife and Parks modeled suitable mountain plover habitat in the State. Mapping indicated that the greatest area of highly suitable habitat occurs in Phillips, Blain, Valley, and Fergus Counties with patchy distribution though the central and southeast portions of the State. The total area of suitable habitat estimated was 18.5 million ac (7.5 million ha) (McDonald 2010).

Childers and Dinsmore (2008, p. 706) reported an estimate of 1,028 mountain plover in Phillips and Valley Counties in 2004 (95 percent CI (903 to 1,153)). In 2010, standardized census areas in southwest, central, and northeast Montana produced fewer sightings than previous surveys (1992–2000, 2004); however, McDonald (2010) stated that results were negatively influenced by above average rainfall, increased vegetation height, and limited private land access; therefore, results cannot be relied upon. Other than apparent confirmation of a previously documented decline in the southwest census area (FaunaWest Wildlife Consultants 2004, pp. 4–5), no trends could be inferred from the 2010 survey.

Andres and Stone (2009, p. 8) used the above estimate by Childers and Dinsmore (2008, p. 706) and previous estimates of about 600 mountain plover elsewhere in Montana and provided a Statewide estimate of approximately 1,600 mountain plover. BBS observations of mountain plover on routes in Montana were insufficient to provide estimates of population trend.

New Mexico

Most breeding season reports of mountain plover in New Mexico have come from the northeast and western counties. Sager (1996, pp. 8–9) found 152 presumed breeding adults at 35 sites in 11 counties in northern New Mexico. Marguilies *et al.* (2004, p. 3) estimated 200 mountain plover in Union County alone throughout the summer and located 46 nests. In a limited effort, they also found 22 mountain plover and six nests on public lands in Taos and Colfax Counties.

At BLM's North Unit, Taos County, point counts in 2005 through 2007 estimated 176 mountain plover on 8,400 ac (3,400 ha) of the 50,000-ac (20,000-ha) unit considered to be favorable mountain plover breeding habitat, based on past observation of mountain plover (Hawks Aloft 2007, pp. 9–11). If the entire unit was occupied at the same density, an estimated 1,000 mountain plover might have been present on the North Unit. Manderson (2010, pers. comm.) inspected habitat away from survey routes in 2010, and suggested that, based on habitat quality, 500 or more mountain plover could be present on the entire unit. Mountain plover numbers seen on the same survey routes in 2010 were comparable to those in earlier (2005 through 2007) surveys (Hawks Aloft 2010, p. 13), suggesting this population may be stable.

Goguen (2010, pers. comm.) estimated a minimum of 40 to 50 breeding mountain plover on the Vermejo Ranch, Colfax and Taos Counties. Mountain plover were also recently reported present in El Malpais National Conservation Area, Cibola County (Hawks Aloft 2008, entire).

We found no Statewide breeding surveys or estimates of Statewide breeding populations for mountain plover in New Mexico, other than Andres and Stone's (2009, p. 8) conservative estimate of 500. Given the above data from Union County, the BLM's North Unit in Taos County, the Vermejo Ranch in Colfax and Taos Counties, and likely mountain plover occurrence in several other counties, we believe that at least 1,000 and potentially significantly more mountain plover breed in New Mexico.

BBS data from New Mexico (Sauer 2010a), 1966 through 2009 (−5.0 percent decline annually, 95 percent CI (−8.6 to −1.2)) and 1999 through 2009 (−4.8 decline annually, 95 percent CI (−12.1 to 2.7)), demonstrate a long-term decline and also suggest a short-term decline in breeding mountain plover numbers in New Mexico. New Mexico is the only State for which the long-term BBS trend statistically differs from zero.

Nebraska

In our December 5, 2002, proposal to list the mountain plover we estimated 200 mountain plover in Nebraska (67 FR 72399). Recent studies attempted to identify the extent of breeding distribution and population size in Nebraska (Bly *et al.* 2008, entire). Most nests were found on agricultural fields in Kimball County, in extreme southwestern Nebraska, but mountain plover were also found in nearby Cheyenne and Blain Counties. The minimum breeding population was estimated to be 80 adults in 2007, based on nests found, and the total estimate of breeding birds ranged upward to 360 (Bly *et al.* 2008, p. 127). Van der Burg *et al.* (2010, pp. 50–53) reported on monitoring in the same three counties (Kimball, Cheyenne, and Blain) in southwestern Nebraska and estimated that mountain plover breeding numbers of 1,650, 1,617, and 1,558 over 3 years of the study (2005, 2006, and 2007, respectively). The authors attributed past low estimates in Nebraska to: (1) Low detection probabilities; (2) clumped spatial distribution of mountain plover, which their estimation methodology corrected for; and (3) "chronic undersampling." Given the above estimates from Van der Burg *et al.* (2010, pp. 50–53), an estimate by Andres and Stone (2009, p. 8) of 500 breeding mountain plover in Nebraska appears low.

Nebraska is the only State that has regulatory mechanisms in place to conserve the mountain plover and its habitat, which likely protect relatively few individuals. The Nebraska Game and Parks Commission lists the mountain plover as a "threatened" species. Listing of endangered and threatened species identifies those animals and plants whose continued existence in Nebraska is in jeopardy. Efforts can then be made to restore the species or to prevent extirpation or extinction. Once a species is listed, a State law, titled the Nebraska Nongame and Endangered Species Conservation Act, automatically prohibits take, exportation, and possession, and imposes severe penalties on violators (Nebraska Game and Parks Commission

2011). Proposed projects that would be authorized, funded, or carried out by Nebraska State agencies are reviewed as part of a mandatory consultation process designed to prevent a State action from jeopardizing the existence of an endangered or threatened species. Recovery plans for endangered or threatened species are developed; these recovery plans identify, describe, and schedule the actions necessary to restore populations of these animals and plants to a more secure status. Given that most mountain plover in Nebraska occur on private agricultural lands, there are not many State projects that are reviewed under the law. It is generally implemented only 4 or 5 times per year, primarily on transportation, transmission, and energy development projects (Lackey 2011, pers. comm.). While this law may provide protection for some individual mountain plover in Nebraska, we believe that it would only have minimal positive effects on the entire population in Nebraska, or on the rangewide population.

Oklahoma

Recent studies to determine the breeding distribution and population size in Oklahoma detected mountain plover in Cimarron and Texas Counties in the Oklahoma panhandle, mostly on fallow or barren agricultural fields (McConnell *et al.* 2009, pp. 30–33). Randomized point counts were used to derive a Statewide population estimate of 68 to 91 birds (McConnell *et al.* 2009, pp. 32–33). Andres and Stone (2009, p. 8) estimated 200 mountain plover breeding in Oklahoma. Given results of McConnell *et al.* (2009, pp. 32–33), we believe that Andres and Stone's (2009, p. 8) estimate may be slightly high. The range of the mountain plover in Oklahoma was described as stable over the past 100 years, with the suggestion that populations may have changed little (Hatcher 2010).

Kansas

The Kansas Department of Wildlife and Parks (2005) stated that mountain plover breed only on dry upland in the shortgrass prairie of western Kansas. While conversion to agriculture has left little native breeding habitat, Cable and Seltman (2010, pp. 50–51) reported mountain plover are an uncommon but regular breeding species in western Kansas and that they also use idle cropland. Morton County may also serve as a staging area for migration in late summer (Cable and Seltman 2010, p. 51). Andres and Stone (2009, p. 8) estimated 200 breeding mountain plover in Kansas. No comprehensive surveys of breeding mountain plover in Kansas have been attempted; however, given their apparent use of both prairie and cropland, and a substantial population in nearby Colorado, the estimate may be appropriate.

Texas

The mountain plover likely breeds in Texas, but there are no confirmed reports of breeding since 1993 (Andres and Stone 2009, p. 16). Holliday (2010) described breeding season sight reports of mountain plover from the Texas Panhandle near known Oklahoma breeding sites. Holliday (2004) also mapped potential breeding habitat, much of it on private land that has not been surveyed. Andres and Stone (2010) did not provide an estimate of breeding mountain plover in Texas. We believe that at least minimal numbers of mountain plover breed in Texas.

Arizona

The only known mountain plover nesting in Arizona is in Apache County in east-central portion of the State, with at maximum perhaps a dozen breeding birds (Gardner 2010, pers. comm.). Breeding has occurred on grasslands where cattle were concentrated and at Gunnison prairie dog (*C. gunnisoni*) colonies (Corman 2005, pp. 591–591; Gardner 2010). However, hundreds of square miles of potential breeding habitat in northern and western Arizona have never been surveyed, and there are reports of potential breeding mountain plover on Tribal lands in Navajo County (Corman 2005, pp. 591–591; Gardner 2010, pers. comm.). Andres and Stone (2009, p. 8) estimated 100 breeding mountain plover in Arizona. This estimate acknowledges potential for a more substantial breeding population than limited observations have documented.

Utah

The mountain plover has been a historically rare breeder in shrub-steppe habitat in the Uinta Basin of northeastern Utah. Manning and White (2001, p. 225) described a small breeding population that averaged about 15 adults yearly. Mountain plover breeding in the area subsequently declined, and no birds have been found during surveys of the area since 2003 (Maxfield 2010, pers. comm.). Andres and Stone (2009, p. 8) estimated fewer than 50 breeding mountain plover in Utah. Based on no recent records of breeding mountain plover, this estimate may be optimistic.

North Dakota and South Dakota

The mountain plover once bred in these States, with higher numbers present in South Dakota, but there are no recent breeding records in either North Dakota or South Dakota (North Dakota Game and Fish Department 2010; South Dakota Game, Fish and Parks 2010).

Canada

A review of breeding records for Canada (Knapton *et al.* 2006, p. 33) concluded that the mountain plover is a peripheral species in Canada with no evidence that it was ever a common or regular breeder. The first breeding record was documented in 1979 and the most recent in 2007 (Knapton *et al.* 2006, pp. 32–33; Holroyd 2010, pers. comm.). Most sightings and breeding records come from extreme southeastern Alberta, with at least one incidence of confirmed breeding in Saskatchewan. Holroyd (2010, pers. comm.) provided updated records of sightings through 2009, mostly from Alberta. Andres and Stone (2009, p. 8) estimated fewer than 100 mountain plover breeding in Canada. We are not aware of any attempts to systematically survey all potential breeding areas in the Canadian range. However, given the low number and limited distribution of reported recent sightings (Holroyd 2010, pers. comm.), we believe that actual breeding numbers are fewer than 100.

Mexico

Breeding records of mountain plover in Mexico have been documented in southeastern Coahuila and Nuevo Leon, following a history of breeding season observations in Mexican prairie dog colonies (Desmond and Chavez-Ramirez 2002 entire; Gonzalez-Rojas 2006, pp. 81–84). Nesting is suspected in San Luis Potosi, 130 mi (200 km) south of the above records (Luevano *et al.* 2010, p. 123).

The extent of mountain plover breeding in Mexico is largely unknown. Andres and Stone (2009, pp. 8, 15) estimated fewer than 300 mountain plover breeding in Mexico (fewer than: 50 in Chihuahua, 100 in Cohuila, 100 in Nuevo Leon, and 50 in San Luis Potosi), but suspect that if there are major concentrations of breeding mountain plover not yet discovered anywhere in their range, they are likely in Mexico. The estimate of fewer than 300 birds is at best a guess, but is appropriately conservative given the lack of knowledge regarding breeding mountain plover occurrence and distribution in Mexico.

In summary, we believe that the rangewide breeding population of mountain plover likely exceeds 20,000, with largest populations in Colorado, conservatively 11,000; Wyoming,

conservatively 3,400; Montana 1,600; Nebraska 1,600; New Mexico, at least 1,000 and potentially many more; and smaller populations elsewhere (Kansas, Oklahoma, Texas, Utah, Canada, and Mexico).

Wintering Range

California

Mountain plover are found from north-central California to the Mexico border, mostly from September to mid-March, with peak numbers from December through February (Knopf and Wunder 2006; Hunting and Edson 2008, p. 181). Mountain plover were historically common on the coastal plain in southern California (coastal prairie, alkaline flats, agricultural fields) before being displaced by human development (Hunting and Edson 2008, p. 182; Wunder and Knopf 2003, p. 78). Historically, much of the mountain plover habitat in the Central Valley grasslands was lost following the decline of grazing elk (*Cervus canadensis*), pronghorn antelope, burrowing kangaroo rats, ground squirrels (*Spermophilus* spp.), and other mammals. The combined activities of these herbivores maintained suitable habitat conditions for mountain plover, conditions closely resembling habitat characteristics found on breeding habitats (Knopf and Rupert 1995, p. 750). Farther south in California, desert scrub in the Imperial Valley was converted to agriculture beginning in the 1940s, creating important wintering habitat for the mountain plover. See Hunting and Edson (2008, p. 181) for details of the mountain plover's historical range and abundance in California.

Mountain plover currently occur in the greatest numbers in two general areas in California: (1) The western Central Valley from southern Colusa and Yolo Counties in the north to Kern County in the south (especially the western San Joaquin Valley, the name by which the southern Central Valley is known); and (2) the Imperial Valley in Imperial County (Hunting and Edson 2008, p. 182). The Carrizo Plain, separated from the San Joaquin Valley by the Temblor Range, and the Panoche Valley are also regularly occupied wintering areas.

Populations and trends in the Central Valley are difficult to determine due to the abundance of potential habitat, flock movements, and lack of systematic surveys (Knopf and Rupert 1995, p. 749; Edson and Hunting 1999, p. 17). In our December 5, 2002, proposal to list the mountain plover (67 FR 72396), we included Edson and Hunting's 1999 (p. 27) comment that mountain plover were "rare and local, exceedingly rare, or accidental" within individual counties in the San Joaquin Valley. Wunder and Knopf (2003, p. 78) suggested that, as a result of habitat loss, many mountain plover had shifted from the Central Valley to the Imperial Valley. Hunting and Edson (2008, p. 182) considered reports of 200 to 300 birds in the San Joaquin Valley in winter of 2004–2005, 100 to 200 in Madera County in 2005–2006, 645 in Tulare County in December 2005, and about 300 in western Kings County in January 2006 to be "exceptional." They also found noteworthy a survey total of 381 mountain plover at the Carrizo Plain in 2006 (Hunting and Edson 2008, p. 182). However, recent reports from the Central Valley also include 645 birds in Madera County in 2006 (McCaski and Garrett 2006, p. 283), 426 in Tulare County in 2007 (McCaski and Garrett 2007, p. 326), 230 in San Joaquin County in 2008 (eBird 2010), 230 in Solano County in 2008 (Central Valley Bird Club 2010), and 223 in Kern County in 2010 (eBird 2010). These reports suggest that significant numbers of mountain plover continue to use widespread areas of the Central Valley annually. Nearby, a recent high count for the Carrizo Plain National Monument was 540 birds in 2009 (Sharum 2010).

In the Imperial Valley, coordinated surveys by 26 observers over 2 days in December 1999 sighted 3,758 mountain plover (Shuford *et al.* 2004, p. 7). A survey of mountain plover and their use of cultivated fields in the Imperial Valley of California in 2001 found 4,037 birds (Wunder and Knopf 2003, p. 75), and 3,476 were counted from January 29 through February 6, 2002, by four observers, with the largest flock consisting of 410 birds (AMEC Earth and Environment 2003, p. 9–10). Mountain plover wintering in the Imperial Valley were surveyed in 2003 and 2004, in an attempt to develop a statistically reliable estimate of numbers (Knopf and Wunder 2004, entire). Flocking behavior, mobility, and weather were among factors found to limit the reliability of Imperial Valley estimates (Knopf and Wunder 2004, pp. 9–12). Results of more recent survey estimates in the Imperial Valley include more than 4,500 mountain plover seen in January 2007, approximately 3,000 seen in January 2008, and 827 seen in January 2011 (Kelsey 2011, pers. comm.).

Hunting *et al.* (2001 p. 40), Wunder and Knopf (2003, p. 76), and Hunting and Edson (2008, pp. 181–183) all suggested a significant decline in numbers of mountain plover wintering in California over previous decades. However, we found little evidence available to establish any trend in more recent (2000 to present) wintering numbers in California. The 4,500 mountain plover recorded in the Imperial Valley survey in 2007 (Kelsey 2011, pers. comm.) exceeded mountain plover observed in Statewide surveys from 1994, and 1998 through 2002 (Knopf 1996, p. 12; 68 FR 53083). Most recently, a Statewide survey over 5 days in January 2011 found 1,235 mountain plover (Kelsey 2011, pers. comm.), considerably fewer than found in previous Statewide surveys or recent Imperial Valley surveys. However, it is not apparent how unusually wet weather or other factors contributed to the relatively low number of mountain plover reported in the 2011 survey. California experienced heavy rains in late 2010. December 2010 was the City of Los Angeles' wettest December in 121 years (Southern California Weather Notes 2010).

While California remains the best documented wintering area for the mountain plover, it may winter less than 50 percent of the estimated breeding population (Andres and Stone, p. 9). Knopf (1996, p. 12) estimated 7,000 mountain plover wintering in California and 1,000 to 3,000 wintering elsewhere. In our December 5, 2002, proposed rule to list the mountain plover as threatened, we suggested that few mountain plover wintered in Texas, Arizona, and Mexico (67 FR 72397). We do not know the actual number of mountain plover wintering in California or how the number varies from year to year; however, given no recent evidence that wintering birds in California number more than the 7,000 estimate above (Knopf 1996, p. 12), and our current rangewide estimate of at least 20,000 breeding mountain plover, the previous contention that California winters the majority of all mountain plover appears incorrect. The fewer mountain plover that are wintering in California, on average or in any given winter, the more important that wintering areas outside California become. Unfortunately, we have little information to pinpoint where the majority of mountain plover are wintering.

Texas

Holiday (2010), based on an examination of LandSat (satellite) photos, found that winter records of mountain plover in Texas correlated to the distribution of barren fields and grazed pastures. He also suggested that the northern limit of the wintering range

in Texas is related to the average number of frost-free days, which influences insect availability. Collins (2006, pp. 27–31) summarized mountain plover wintering status in Texas (with much of the compiled records and maps attributable to Holliday). Populations in Hondo County and Medina County areas were described as potentially the largest; Williamson County was characterized as a well-known wintering area, but with populations potentially small compared to other less known areas. Mountain plover were also present around Wharton, Wharton County, and surrounding counties, and the Corpus Christi area was said to potentially hold more mountain plover than reports indicate (Collins 2006, p. 30). Estimates by knowledgeable local birders of wintering mountain plover in the coastal bend area (Nueces and San Patricio Counties) ranged from 200 up to 2,000 to 3,000 birds (Cobb 2009, pers. comm.). The higher numbers were characterized as speculative because the vast amount of available habitat where access is generally limited makes it difficult to draw any conclusions. Andres and Stone (2009, p. 20) provided an estimate of 1,500 mountain plover wintering in Texas, with a note that abundance could be much greater.

Arizona

Approximately 500 mountain plover are believed to winter in agricultural areas of southern and western Arizona, but numbers could be higher because private and Tribal lands are largely unsurveyed (Gardner 2010). Wintering numbers in La Paz and Pinal Counties appeared stable; numbers in Cochise County have significantly decreased in the last 10 to 15 years due to urban expansion; and Yuma County populations were characterized as increasing, with 150 to 300 birds annually (Gardner 2010; Robertson 2010, pp. 3–4). Wintering mountain plover are also reported from the Sulphur Springs Valley in Cochise County (Robertson 2010, p. 2). Andres and Stone (2009, p. 20) provided an estimate of 200 mountain plover wintering in Arizona. Given limited coverage of potential wintering habitat, we consider the above estimate of 500 birds wintering in Arizona the likely minimum.

Nevada

Wintering mountain plover are rarely reported from Nevada, with the most recent reports of up to 17 mountain plover coming from the Armagosa Valley near the Nevada-California border northwest of Las Vegas (eBird 2010).

New Mexico

While some mountain plover likely winter in southern New Mexico, we have no information regarding locations or numbers.

Mexico

Mountain plover's winter distribution in Mexico has not been well studied, but the species is believed to winter from along the United States-Mexico border south into the border States of Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas, and beyond into Durango, Zacatecas, and San Luis Potosi (Gonzales-Rojas *et al.* 2006, p. 81; Knopf and Wuder 2006; Macias-Duarte and Punjabi 2010, p. 4). While the Mexicali Valley, Baja California, located just south of the Imperial Valley, seems to have suitable wintering habitat (200,000 ac (80,000 ha) of farmland), mountain plover have rarely been reported from the area (Macias-Duarte and Punjabi 2010, p. 3).

Two primary concentration areas within the Chihuahuan Desert are believed to be most important for wintering mountain plover: (1) The Janos area in northwestern Chihuahua; and (2) the El Tokio grasslands in southern Coahuila, Nuevo Leon, northeastern Zacatecas, and northern San Luis Potosi (Macias-Duatre and Punjabi 2010, pp. 3–6). Mountain plover are most abundant in the La Soledad region of the El Tokio grasslands. The highest estimated density in Llano de la Soledad (based on data from the winter of 2005–2006) extrapolated over the area suggests that over 2,000 mountain plover were present. Extrapolation from Llano de la Soledad to all prairie dog colonies in the entire El Tokio region provided an estimate of 6,800 mountain plover (Macias-Duarte and Punjabi 2010, p. 6). While this estimate is crude and may be optimistically high, it is not inconsistent with reports of mountain plover flocks in the area totaling 1,600 to 3,500 birds reported by Andres and Stone (2009, p. 18). In the winter of 2005–2006, surveys in Janos estimated 1,435 birds (Salinas 2006, p. 43).

The reported sightings and the estimates presented above are maximums reported, and the numbers can vary greatly from year to year. However, these reports suggest that a substantial number of mountain plover may winter in Mexico. Andres and Stone (2009, p. 20) provided an estimate of 5,000 birds wintering in Mexico. Changes in sampling methodology, annual variability in mountain plover numbers, and the short duration covered by recent systematic surveys prevent any conclusions regarding trends (Macias-Duarte and Punjabi 2010, pp. 5–6, 16, 17).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing of the mountain plover during the June 29, 2010, through August 30, 2010, comment period that followed our June 29, 2010, document (75 FR 37353) vacating our September 9, 2003, withdrawal (68 FR 53083) and reinstating our December 5, 2002, proposal to list the mountain plover (67 FR 72396). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule and supporting documents. Following an initial draft of our final determination we contacted 5 peer reviewers and asked them to review selected portions of the draft.

We received 53 comments in response to the December 5, 2002, proposed rule (67 FR 72396) during the June 29, 2010, to August 30, 2010, comment period. These included comments from 3 Federal entities, 10 States, 3 local governments, 28 organizations or groups (business, industry, environmental), and 8 private parties. WildEarth Guardians also forwarded us 302 similar comments from individuals, and the Colorado Farm Bureau forwarded us 8 similar comments from individuals. We received no requests for public hearings. We also reviewed comments received after our February 16, 1999, and December 5, 2002, proposals to list the mountain plover (64 FR 7587 and 67 FR 72396, respectively) for relevant issues not addressed in more recent comments. All substantive comments have either been incorporated into this final determination or are addressed below.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the mountain plover, with other shorebird species, the geographic region and habitats in which the mountain plover occurs, and conservation biology principles. We provided reviewers with a partial draft of this document. We received responses from all five of the peer reviewers that we contacted. The peer reviewers generally agreed that we accurately described the species and its habitat requirements; that we provided accurate review and analysis of factors

affecting the species; that our assumptions and definitions of suitable habitat were logical and adequate; that there were few oversights, omissions, or inconsistencies in out draft document; and that we used pertinent literature to support our assumptions and conclusions. One reviewer was generally critical of the synthesis of information regarding threats to mountain plover habitat, especially our assessment of wintering habitat in the Imperial Valley. One reviewer limited comments primarily to population trends. The peer reviewers provided suggestions to improve this final document. Recommended editorial revisions, clarifications, and other changes have been incorporated into the final document as appropriate. We respond to all substantive comments below or through changes to the final document.

Comments From Peer Reviewers

(1) *Comment:* Three reviewers questioned specific details of our range map.

Our Response: Figure 1, depicting the mountain plover's range, was developed based on those in Knopf and Wunder 2006, and Andres and Stone 2009, with modifications based on our review of recent information. Our map depicts generalized areas believed to support breeding and wintering mountain plover, and does not depict localized areas of presence or absence. We made some revisions to our range map based on reviewer comments.

(2) *Comment:* One reviewer pointed out that while mountain plover are attracted to burned areas on their breeding ground, there is little evidence as to whether such burned areas benefit breeding mountain plover (for example, through higher nest success or fledging success) compared to habitats they may otherwise use.

Our Response: Reduced vegetative cover resulting from burning appears more attractive to mountain plover than similar habitat left unburned. However, we agree that studies have not documented the specific relationship of burning to successful mountain plover nesting.

(3) *Comment:* One reviewer stated that estimates of annual survival should be considered minimum estimates, because studies do not control for permanent migration of mountain plover (*i.e.,* they assume birds not accounted for have died rather than moved away from the study area).

Our Response: We agree and have acknowledged this in the text. Studies in Montana have produced the most complete information on juvenile (first year of life) and adult mountain plover annual survival rates, but the extent to which these studies underestimate survival rates due to emigration is not known.

(4) *Comment:* One reviewer asserted that recent literature clearly identified adult survival as a vital importance to productivity and survival of shorebird populations.

Our Response: We agree. In the limited studies that have estimated adult survival of mountain plover, adult mountain plover survival appears relatively high. The suggestion that management efforts to increase mountain plover populations might best be targeted at increased chick survival (hatching to fledging) result, in part, from data showing relatively low and highly variable survival of mountain plover chicks (see Survival, Lifespan, and Site Fidelity above).

(5) *Comment:* Two reviewers noted that while the mountain plover may have a long lifespan compared to many other shorebirds, some shorebirds do live longer and other bird families, such as seabirds, live much longer.

Our Response: Mountain plover in the wild have been known to live to over 10 years. We have qualified our description of the mountain plover as a "relatively" long-lived species.

(6) *Comment:* One reviewer suggested that mountain plover fidelity to breeding sites is more regional than site-specific and that differences in habitat across the mountain plover breeding range may influence site fidelity.

Our Response: Both may be correct. Lack of genetic differentiation found by Oyler-McCance *et al.* (2005, p. 359; 2008, pp. 496–497) suggest that mixing of mountain plover across regions is also occurring.

(7) *Comment:* One reviewer suggested that we discuss spatial and temporal variation in long-term and recent BBS trend data for the mountain plover and cited a long-term (1966 through 2009), negative New Mexico trend as the only statistically significant population trend among the rangewide or Statewide BBS trend estimates we provide.

Our Response: We have included data pertinent to spatial and temporal (by State and long-term versus short-term) trends in mountain plover populations in this document when available (see Conservation Status and Local Populations above). These statistics are based on fewer data and generally appear less reliable than rangewide trends. The long-term trend estimate in New Mexico is unique among those we cite, in that it reflects a statistically significant indication of at least some decline.

(8) *Comment:* One peer reviewer stated that there is insufficient information about the distribution and status of the mountain plover in Mexico to evaluate whether past, present, or future loss of prairie dogs and the ecosystem they support in Mexico is a significant threat to the mountain plover.

Our Response: We agree that information on the distribution and status of the mountain plover in Mexico is limited. Based on the information available, past loss of prairie dogs colonies in Mexico has decreased available mountain plover habitat and may have had some adverse impact on the mountain plover. Recent Mexican and international attention to conservation of prairie dogs and grassland complexes in Mexico improves prospects for maintaining existing mountain plover wintering habitat (see *Factor A* below). While future losses of prairie dog colonies in Mexico may occur, we do not believe that associated impacts to mountain plover's habitat present a significant threat to the mountain plover over its wintering range.

(9) *Comment:* One reviewer stated that discussion of habitat loss to land use modification would be greatly improved by including specifics of how these losses fall within the precise breeding and wintering habitats of the mountain plover. Two reviewers contended that the relative threat posed by agricultural conversion (of grasslands) was difficult to assess unless analyzed at a fine spatial scale.

Our Response: The mountain plover's breeding and wintering ranges extend across a large area and encompass a variety of habitat types. We have addressed habitats supporting the mountain plover, habitat losses, and threats to mountain plover habitat on a rangewide and regional level, and in some cases on a State or local level as well.

(10) *Comment:* One reviewer offered that uncertainties regarding future agricultural practices on private lands emphasized the importance of managing for the mountain plover on State and Federal lands.

Our Response: A great degree of uncertainty exists regarding future agricultural practices on private lands, but we believe that changes in agriculture are not likely to significantly threaten the mountain plover in the foreseeable future. Across the range of the mountain plover there are currently many initiatives, on both public and private lands, to manage habitat for wildlife including the mountain plover, bird species using similar habitats, and

prairie dogs (see *Factor A* discussion below). The mountain plover has been designated a bird of conservation concern by the Service (2008) and has special conservation status in many States (see Conservation Status and Local Populations above and *Factor A* discussion below). We anticipate and support continued emphasis on mountain plover conservation and management by our Federal and State partners.

(11) *Comment:* One reviewer noted that, without synthesis of exactly what agricultural lands mountain plover require on their wintering areas and how those specific fields are threatened (for example, fallowing of crop fields in California's Imperial Valley), our conclusion that threats impacting only a small portion of agricultural lands would not affect mountain plover was problematic.

Our Response: In Migration and Wintering Habitat above, we describe wintering habitats favored by the mountain plover. In *Factor A* below we discuss threats that may impact these habitats, including threats to certain crop types favored by the mountain plover. The level of analysis we provide is sufficient to evaluate threats to the mountain plover from changes on agricultural lands that provide wintering habitat and utilizes the best available information we have regarding this topic. Without specific information to suggest otherwise, we conclude that threats would not disproportionately impact those particular fields that presently receive, or in the future would receive, most use by the mountain plover.

(12) *Comment:* One reviewer noted that the Imperial Valley, California, an area supporting significant numbers of wintering mountain plover, is one of the fastest growing areas of the United States.

Our Response: From 1984 to 2008, urban area in the Imperial Valley increased by 6,000 ac (2,400 ha) (CDC 2010), much of it outside of croplands favored by the wintering mountain plover. About 381,000 ac (154,000 ha) of field crops are present in the Imperial Valley (Imperial Irrigation District (IID) 2009a). We concluded that population growth and urban expansion is having a modest impact on Imperial Valley croplands, but does not rise to the level of a threat to the species (see *Factor A* discussion below).

(13) *Comment:* One reviewer stated that, over the wintering range of the mountain plover, increase in human population, associated land use changes, and reductions in available water for agriculture would impact areas currently used by mountain plover. The reviewer concluded that because there was "lack of suitable habitat to move to," this would be detrimental to mountain plover.

Our Response: Human development and changes in agriculture, including changes brought on by future water availability, are likely to impact some of the areas currently used by wintering mountain plover in California, in southern Arizona, and elsewhere in their wintering range. Based on the likely magnitude of such changes and the extensive wintering range of the mountain plover, we conclude that loss of wintering habitat is not likely to be a significant threat to the mountain plover in the foreseeable future (see our discussion in *Factor A* below).

(14) *Comment:* One reviewer questioned whether mountain plover are impacted by pesticides and herbicides used on sod farms where they are often seen during migration or in winter.

Our Response: We have found no documentation of effects to mountain plover from exposure to pesticides on sod farms. However, in the past, the use of diazinon, an organo-phosphate pesticide, on sod farms may have impacted the mountain plover. In 1988, after documented large die-offs of birds of other species, the U.S. Environmental Protection Agency (EPA) cancelled the registration of diazinon for use on golf courses and sod farms (EPA 2006, p. vii). We have no information regarding significant harm of any bird species since 1988 that is attributable to use of pesticides on sod farms.

(15) *Comment:* One reviewer suggested more discussion on invasive grasses and their impact on mountain plover.

Our Response: Invasive plants, including nonnative grasses planted as forage for cattle, are widespread across the western United States. Many invasive plants grow to a density or height that can make habitat unsuitable for mountain plover. While perceived by some as a potential threat, the effects of nonnative grasses and invasive plants on the mountain plover have not been well documented. Within the ecosystems it inhabits, the mountain plover is best supported where native or domestic herbivores, fire, dry conditions, soil conditions, or disturbance create low, sparse vegetation. In general, this is true whether the vegetative community consists only of native vegetation or also supports a component of nonnative or invasive plants.

Public Comments

Process Issues

(16) *Comment:* One commenter stated that e-mails, personal communications, and letters that the Service referenced in support of the December 5, 2002, listing proposal (67 FR 72396) do not meet the best information available standard as described in Service policy (59 FR 34271, July 1, 1994).

Our Response: Our policy, as cited above, requires that we evaluate all scientific and other information available, which includes both published and unpublished materials, in the development of a listing action. We review the information regardless of origin, and determine whether it is reliable, is credible, and represents the best information available regarding the species under review. We document our evaluation of any information we use in making our decision, whether it supports the decision or not.

(17) *Comment:* Commenters believed that our analysis in our February 16, 1999, and December 5, 2002, proposals to list the mountain plover (64 FR 7587 and 67 FR 72396, respectively) used "selective science" to defend our position, while ignoring information contrary to our conclusion.

Our Response: We base our determinations on review of all pertinent information available. This final determination is further based on substantial new and additional information available since our previous actions.

(18) *Comment:* One commenter stated that in the 1999 and 2002 proposals to list the mountain plover (64 FR 7587 and 67 FR 72396, respectively) the Service did not identify or quantify actual threats, and therefore the Service has not shown that mountain plover have declined or are at risk.

Our Response: In this final determination, we have evaluated the relative security of the species from present and foreseeable threats across its breeding, migratory, and wintering range. Where available information has allowed, we have identified and quantified actual threats to the mountain plover in this evaluation. While threats, especially future threats, may be difficult to quantify, we evaluate threats based on analysis of the best scientific and commercial information available.

(19) *Comment:* One commenter stated that e-mails and faxes should be accepted as comment on the proposed listing.

Our Response: Our policy requires submission of written comments through the Internet (via the Federal

eRulemaking Portal at *http://www.regulations.gov*), or by U.S. mail or hand-delivery, and we believe this provides the means for all interested parties to provide comments, information, and recommendations.

(20) *Comment:* Various commenters suggested that there are either more or fewer reasons for listing the mountain plover now compared to 2003 when our proposed listing was withdrawn (68 FR 53083, September 9, 2003).

Our Response: Our 2003 decision was vacated by the Court and is not relevant to this final determination regarding the mountain plover. We have based our determination on the current status of the mountain plover and current and future threats to the species, based on the best scientific and commercial information available to us at this time.

Issues Regarding Range, Numbers, and Populations Trends

(21) *Comment:* One commenter questioned our emphasis on the PNG in Colorado and Charles M. Russell National Wildlife Refuge (NWR) in Montana in our proposals to list the mountain plover, as relatively few mountain plover breed in either site.

Our Response: We agree that neither site currently supports a large percentage of the total mountain plover population. Both sites are Federally controlled and have supported mountain plover research and management efforts. The PNG once likely supported the highest density of mountain plover in the species' breeding range. The dramatic loss of this sizable population has relevance to the rangewide population trend and may provide insight to current and future threats to the mountain plover. Charles M. Russell NWR provides management opportunities on a Montana site representative of those where mountain plover is largely dependent on the black-tailed prairie dogs to create desirable habitat conditions.

(22) *Comment:* One commenter stated that breeding habitat on public and private lands in the mountain plover's range has not been adequately surveyed and suggested that additional surveys will consistently find more mountain plover.

Our Response: Knowledge of mountain plover populations varies greatly across the breeding range. Surveys vary in methodology and scope. In some cases, lack of access to conduct surveys on private lands limits the accuracy of population estimates. Based on information available since 2002, estimates of mountain plover breeding numbers in certain States and throughout the range have been modified. Former rangewide population estimates were based on surveys of mountain plover in California, where the vast majority of birds were thought to winter. Our current rangewide population estimate is based on minimum breeding range population estimates. However, no estimate currently exists that provides a precise estimate of rangewide numbers.

(23) *Comment:* One commenter dismissed population estimates as "just a guess."

Our Response: We believe that some structured studies on the breeding range have produced population estimates that approximate the actual numbers of mountain plover that are present. In other cases, estimates may be limited to the minimum number of individuals known, or may suggest the likely population size based on limited data. While we summarize population estimates and seek to understand population trends, numbers alone are not the basis for listing determinations under the Act. Listing determinations are based on whether there are threats present or likely to occur that would result in the species being in danger of extinction or likely to become so within the foreseeable future.

(24) *Comment:* Several commenters cited increased rangewide population estimates as a reason why the mountain plover does not merit listing. One commenter cited the recent status change by the IUCN (downlisting from "vulnerable" to "nearly threatened") as evidence of reduced threat to the species.

Our Response: While greater abundance suggests less vulnerability, we have no basis to suggest that the increased estimate of mountain plover numbers reflects an actual, rangewide increase. The number of individuals of a species present is only one factor considered when assessing vulnerability to extinction. Current and future threats may be of greater significance. Downlisting by the IUCN was based on revised population estimates alone, and not on changed interpretation of threats present.

(25) *Comment:* One commenter noted that all wintering areas in the United States and Mexico have not been located and opined that further searching is likely to yield more wintering sites.

Our Response: While more information overall has been gathered since our 2002 proposal (67 FR 72396, December 5, 2002), much is still unknown regarding wintering habitat. Rangewide breeding population estimates and wintering estimates from California suggest that a substantial percentage of mountain plover winter elsewhere. Because the large flock sizes observed in California are not regularly encountered elsewhere, mountain plover numbers may occur at lower densities in other parts of their wintering range.

(26) *Comment:* One commenter stated that the former estimate of 20,000 breeding mountain plover at the PNG in the 1970s may have been off by an order of magnitude.

Our Response: While the actual number present in the 1970s is unknown, it is well established that mountain plover populations on the PNG have greatly decreased since that time, with relatively few breeding mountain plover present since the mid-1990s.

(27) *Comment:* One commenter questioned our estimates of up to 10,000 mountain plover at Kern NWR in California during the 1960s.

Our Response: Many mountain plover used Kern NWR in winter during the 1960s, but the 10,000 estimate is by far the largest recorded (Engler 1992). We believe estimates at Kern NWR approximate mountain plover numbers attracted to the refuge by favorable habitat conditions previously present.

(28) *Comment:* Multiple commenters mentioned continued, significant declines across the breeding and wintering range of the mountain plover, as cited by researchers, as indicative of the species' imperiled status.

Our Response: Documentation of historical range contraction and apparent decline in mountain plover populations is reflected in long-term BBS and CBC trends. Despite more intensive study in recent years, it is not clear if, or to what extent, any declines in mountain plover populations continue. See our discussion of Population Size and Trends above.

(29) *Comment:* A few commenters stated that BBS and CBC data and trends regarding mountain plover are unreliable. Others state that these data are a reason for concern.

Our Response: The BBS is the best available long-term trend information for the mountain plover on its breeding range. It is an imprecise indicator of mountain plover population trends. These data appear to confirm a decline over the period 1966 through 2009, but results suggest that the rate of any continued (1999 through 2009) decline has moderated. The CBC data are more restricted in geographic scope than are the BBS data, but these data also suggest a long-term decline. Few CBC count circles regularly report mountain plover, and numbers are highly variable, likely reflecting mobility of wintering flocks.

See our discussion of Population Size and Trends above.

(30) *Comment:* We received a comment that insufficient data are available to predict any trend toward extinction.

Our Response: We agree that current trend data are limited and that the ability to project future population trends is difficult. However, we have reviewed the best population and trend data available as part of our analysis of the mountain plover's status. In making our final listing determination, we not only looked at population trends, but we have also evaluated the best available information on current and future threats to the species.

(31) *Comment:* One commenter suggested that population trends at the PNG, where the birds have been closely studied, are indicative of the overall population trend for the mountain plover.

Our Response: Knopf (2008, p. 61) summarized mountain plover studies on the PNG in Weld County, Colorado, and suggested reasons for that population's former abundance and more recent decline, including long-term changes in habitat since abandonment of agricultural fields following the "Dust Bowl" of the 1930s. We believe that this represents a unique history because long-term BBS data (Sauer 2010a) suggest a relatively stable population in Colorado despite the dramatic drop in numbers on the PNG. In 2008, Knopf expressed the opinion that similar numbers of mountain plover were breeding in Weld County as in 1990, just not on the PNG (Knopf 2008, p. 54). We have no scientific information that would point to the precipitous decline in mountain plover historically at the PNG as indicative of the overall mountain plover population trend.

(32) *Comment:* One commenter suggested that mountain plover numbers are dynamic, and that their current abundance is within the range of normal fluctuation due to annual variation in weather patterns.

Our Response: Breeding numbers and nest success can vary locally based on a number of factors including weather. However, the historical reduction in rangewide mountain plover numbers seems well substantiated. Interpretation of recent trends is made more difficult by short-term variability in population numbers that may reflect annual weather variation. The effect of all factors, natural and human-caused, that may contribute to the survival of the mountain plover is considered in this determination, including variation in weather patterns and longer-term changes in climate.

Species Vulnerability

(33) *Comment:* One commenter referenced the mountain plover's relatively short lifespan as contributing to the vulnerability of populations to extirpation if one or more years of unfavorable habitat on their breeding grounds prevent successful nesting.

Our Response: As discussed above in our discussion of Population Size and Trends, and under *Factor E* below, our former conclusion that the lifespan of mountain plover contributed to its vulnerability has been refuted based on more recent information. The mountain plover is now considered a relatively long-lived species, with one individual documented living for 10 years (Dinsmore 2008, p. 52). We do not believe that mountain plover lifespan substantially influences the vulnerability of mountain plover to extinction.

(34) *Comment:* One commenter stated that breeding mountain plover populations are often discontinuous, in part because of habitat fragmentation, and stated that local, isolated mountain plover populations have an increased vulnerability to random natural and human-caused events.

Our Response: It is generally true that small and isolated populations are less secure than larger populations. While the mountain plover is a migratory, highly mobile species, it generally returns to the same breeding sites, which isolates local populations to a degree. Small mountain plover populations are vulnerable to "blinking out" if events destroy or degrade habitat. This vulnerability may be offset by the species' ability to colonize new habitat as it becomes available. Recent studies describe mountain plover dispersal from natal sites or former breeding sites, and suggest that the mountain plover has been able to disperse and exploit habitat nearby if former habitat is destroyed.

Prairie Dog Issues

(35) *Comment:* We received numerous comments regarding mountain plover and prairie dogs. They included comments regarding the mountain plover's dependence on prairie dogs, and the distribution, abundance, and trends in prairie dog populations. One commenter contended that if the black-tailed prairie dog does not merit listing, then the mountain plover does not either.

Our Response: It is well established that in parts of its range, Montana in particular, the mountain plover is largely dependent during breeding on the habitat that prairie dogs create and maintain. Elsewhere, mountain plover also breed in a variety of habitats, including prairie, semi-desert, and cropland. See our discussion regarding the status and threats to the black-tailed prairie dog and potential effect on the mountain plover in *Factor A* below. We recently determined that the black-tailed prairie dog does not warrant listing under the Act (74 FR 63343, December 3, 2009), but it does not follow that this would automatically lead to a similar conclusion for the mountain plover since the species could be subject to a variety of threats unrelated to the status of prairie dogs.

(36) *Comment:* We received a comment that the Service in 1999 and 2002 underestimated the presence of prairie dogs and therefore their habitat and the number of mountain plover that prairie dog colonies supported.

Our Response: Our current analysis includes information developed since 2002. Under *Factor A* below, we discuss current estimates of prairie dog abundance and implications of prairie dog numbers to mountain plover.

(37) *Comment:* Some commenters stated that black-tailed prairie dogs lack protection, are often poisoned or shot, and are often affected by sylvatic plague; therefore, prairie dog colonies and the mountain plover they support remain vulnerable.

Our Response: We agree that there are few protections for the black-tailed prairie dog. However, despite the above factors, the black-tailed prairie dog has increased in number throughout all States in its range in the United States since the 1960s. In the United States, we do not foresee any significant decreases in black-tailed prairie dog populations or the habitats they create. On December 3, 2009, the Service published a 12-month finding that the black-tailed prairie dog is not threatened with extinction and is not likely to become so in the foreseeable future (74 FR 63343). In Mexico, both the black-tailed prairie dog and the Mexican prairie dog continue to be reduced in number and distribution, and this likely impacts mountain plover habitat. See our discussion under *Factor A* below.

(38) *Comment:* Other commenters cited conservation efforts that target prairie dogs, as well as efforts to conserve greater sage-grouse (*Centrocercus urophasianus*), lesser prairie-chicken (*Tympanuchus pallidicinctus*), and black-footed ferret (*Mustela nigripes*), and concluded that these existing efforts make mountain plover conservation efforts unnecessary.

Our Response: Efforts to conserve these species are in response to declines in numbers and threats to their future existence. While the mountain plover

will benefit from conservation of prairie dogs, some other species require habitats unlike those favored by the mountain plover. To the extent that mountain plover benefit from conservation efforts for other species, these are addressed under *Factor A,* below.

(39) *Comment:* One commenter contended that the presence of prairie dogs was only one of several factors that create mountain plover breeding habitat and that soil type, soil moisture, cattle grazing, fire, and incidence of drought all play a role in supplying suitable mountain plover breeding habitat.

Our Response: While the literature on the mountain plover is replete with the association of mountain plover and prairie dog colonies, we agree that other factors, singly or in combination, can shape mountain plover breeding habitat, and we have taken this into consideration in this final listing determination.

Grassland Conversion and Agricultural Issues

(40) *Comment:* Multiple commenters state that grassland conversion to cropland is a significant threat.

Our Response: While grassland conversion contributed to past contraction in the mountain plover's range and reduction of the mountain plover's numbers, much of this took place on the eastern Great Plains where conversion to crops such as corn and soybeans was feasible. The rate of grassland conversion is now much reduced. We do not believe that the current or anticipated future conversion of grasslands to other uses is a significant threat. Dryland agriculture, found in the southern portions of the mountain plover's breeding range, supports significant numbers of breeding mountain plover. The extent to which the use of dryland agricultural habitat is beneficial to the mountain plover is largely undetermined. See our discussion under *Factor A* below.

(41) *Comment:* One commenter contended that current farming practices benefit breeding mountain plover, that mountain plover are an adaptable species that have shifted from grasslands to cultivated lands on both their breeding and wintering areas, and that cultivated lands are now the most important habitat for the mountain plover. Other commenters raised the question of whether the choice to nest in cropland is detrimental to mountain plover.

Our Response: Research findings from Colorado present a complex picture. Hatching success on some croplands is similar to that found on grasslands with or without prairie dogs. Chick survival appears to be lower on crop fields, but results of some studies differ, perhaps depending on variables such as annual weather conditions and site-specific levels of predation. The influence of the agricultural landscape on mountain plover recruitment has not been fully determined. Wintering mountain plover favor crop fields at times, but habitat preference seems to vary greatly by region. Mountain plover use of crop fields in winter may reflect the loss of preferred native habitats.

(42) *Comment:* One commenter stated that farming practices on the prairie have not changed in 50 years and questioned why they could suddenly be a threat.

Our Response: Dryland farming practices in eastern Colorado and adjacent States have remained relatively stable, although market factors may favor one crop over another. Historically, conversion of prairies to crop fields likely contributed to the decline of mountain plover, especially in the eastern portion of its range. Farm operations can directly impact nesting, but the current relationship between dryland crop fields and breeding mountain plover is complex. However, the best available information indicates that current agricultural practices have remained largely unchanged in recent years and have not been shown to pose a threat to the mountain plover (see *Factor A* discussion below).

(43) *Comment:* Several commenters stated that the Conservation Reserve Program is beneficial to the mountain plover, while other commenters thought the program was detrimental to the mountain plover.

Our Response: The U.S. Department of Agriculture (USDA) administers the Conservation Reserve Program, which allows producers to retire agricultural lands for a 10-year period, thereby benefitting wildlife and other resources. Most of these lands are planted with nonnative grasses that support other wildlife species but often do not create mountain plover habitat. The program likely has little effect on overall mountain plover habitat because a relatively small portion of agricultural fields are retired at any one time and retired lands provide minimal benefit to mountain plover.

(44) *Comment:* Commenters expressed concern that anticipated human population growth in South Park, Park County, Colorado, and the fragmentation of existing habitat there, will impact a significant mountain plover population.

Our Response: We agree that buildout of private lands in South Park would adversely affect the mountain plover breeding population that is currently present. However, based on information from Park County, population growth is much slower than once predicted, and we do not anticipate substantial human development will occur in the area in the foreseeable future. See our discussion under *Factor A* below.

Livestock/Grazing/Range Management

(45) *Comment:* One commenter stated that range management has contributed to the past decline of mountain plover and is a current threat, as practices vary little from those used previously.

Our Response: Range management is often designed to maximize forage and diminish excessive disturbance to grass and soil. Such management, when employed, does not benefit the mountain plover. However, we do not see range management as representing a current or future threat to the mountain plover, as there is no information to suggest that current range management practices and the habitat conditions now present are likely to change substantially in the future.

(46) *Comment:* One commenter cited recommendations by Knopf and Wunder (2006) to prioritize research regarding varied livestock grazing practices and their effects on mountain plover.

Our Response: Research is ongoing as to how range management affects mountain plover and a variety of other grassland species. We have a basic understanding of how livestock grazing can enhance mountain plover habitat (Dechant *et al.* 2003, entire).

(47) *Comment:* Commenters cited the decline in sheep (*Ovis aries*) numbers in the mountain plover's breeding range as detrimental to mountain plover.

Our Response: Sheep grazing helps maintain low vegetation structure favored by the mountain plover. The U.S. sheep industry has been in decline since the 1940s. Past declines in sheep may have contributed to losses in mountain plover breeding habitat. The future of the sheep industry in the United States is difficult to predict. See our discussion under *Factor A* below.

(48) *Comment:* One commenter stated that cattle do not replace the role of bison in the ecosystem, and that the role of cattle grazing as it relates to insect availability has not been adequately evaluated.

Our Response: The historical loss of bison resulted in a number of changes to the prairie ecosystem. Current mountain plover numbers and distribution, and our evaluation of threats to the species, are based on an ecosystem largely devoid of bison.

Insect numbers and availability to mountain plover under various grazing regimes may be worthy of investigation.

Mineral Extraction/Energy Development

(49) *Comment:* We received many comments on the threat to the mountain plover posed by oil and gas field development, and wind energy development. Commenters stated that effects of energy development on the mountain plover are largely unknown and that the mountain plover's response to oil, gas, and wind energy development should be investigated.

Our Response: We discuss the potential impact of energy development on mountain plover under *Factor A* below. Wells, turbines, roadways, and related development constitute potential threats. While far from definitive, recent studies suggest mountain plover may be little affected by oil and gas development. Thus far, we have no data on the effect of wind energy development on wintering mountain plover.

(50) *Comment:* One commenter recounted the history of mountain plover presence at the Antelope Coal Mine in Wyoming and suggested that mountain plover are tolerant of both ground disturbance and nearby industrial activity.

Our Response: We agree that results of monitoring at this site confirm the mountain plover's preference for open ground created by disturbance and a general tolerance of human activity. While mining activity displaces mountain plover, reclamation following mining may restore habitat.

(51) *Comment:* One commenter described new wind energy projects under development in southern Texas areas where mountain plover winter and thought that the species would be affected by the presence of turbines.

Our Response: As stated earlier, thus far, we have no data on the effect of wind energy development on wintering mountain plover. The response of mountain plover to turbines on their breeding areas (which indicates some degree of tolerance) may not provide insight into how flocks respond in winter.

(52) *Comment:* One commenter noted conservation efforts to limit energy development on State-designated greater sage-grouse Core Breeding Areas in Wyoming, which include 36 percent of likely mountain plover breeding habitat in the State. The commenter suggested that this will provide a significant measure of protection for the mountain plover.

Our Response: While limitations on energy development in these areas may reduce potential for any associated adverse impacts on the mountain plover, there is uncertainty as to whether such measures will persist into the future. Designated greater sage-grouse Core Breeding Areas are broad and encompass habitats that support mountain plover, but from a habitat perspective, the needs of the two species differ. Measures to manage for the greater sage-grouse may not benefit the mountain plover.

(53) *Comment:* One commenter suggested that the Service should base its analysis of the energy development threats on what is known regarding the impact of roads, habitat conversion, and fragmentation. Others raised the issue of roads and structures resulting in increases in mammalian and avian predators of mountain plover, which in turn could lead to higher mortality of mountain plover chicks and adults.

Our Response: In general, while some other species have been shown to be adversely impacted by energy development, we have little evidence of similar impacts on the mountain plover. Changes in habitat brought on by energy development, including the potential that roads and structures may facilitate increased predation on the mountain plover, are addressed under *Factor A* and *Factor C* below. Some adverse impacts are likely, but there may also be offsetting benefits resulting from the increase in bare ground preferred by the mountain plover.

(54) *Comment:* One commenter noted that the Western Governors Association, States, and the wind industry have been addressing concerns regarding construction of wind energy projects on sensitive wildlife areas.

Our Response: The Service is engaged with the wind industry and other partners on issues regarding a range of wildlife including the endangered whooping crane (*Grus americana*), and candidates including the greater sage-grouse, lesser prairie chicken, and Sprague's pipit (*Anthus spragueii*), as well as the mountain plover. We anticipate that current emphasis on renewable energy projects will be accompanied by cooperative initiatives to minimize impacts to species of concern.

(55) *Comment:* One commenter was concerned that mountain plover populations could decrease significantly while studies on impacts from energy development were ongoing and that precautionary measures should be enacted to preclude potential impacts.

Our Response: The USFS and BLM have designated the mountain plover a sensitive species within portions of the range (see discussion under *Factor D* below). These agencies address potential impacts to the species when reviewing energy development. However, we will continue to work with these and other Federal agencies, States, and other partners to monitor the status of the mountain plover.

Wintering Habitat

(56) *Comment:* We received many comments on actual or potential loss of wintering habitat in California and how this could affect rangewide populations of mountain plover. Commenters stated that the historical and ongoing conversion of grasslands in California is a threat to the mountain plover. Some commenters cited Andres and Stone (2009, p. 1), describing crucial threats facing the mountain plover, including "* * * the inability to manage agricultural lands in the Imperial Valley, California, to provide consistent winter habitat, and the loss or inadequate management of other known wintering areas in California."

Our Response: Much of the native grassland that the mountain plover formerly used for wintering in California has been lost. While the mountain plover has shown a preference for native and nonnative grasslands in California, especially when heavily grazed, the mountain plover has successfully switched to using crop fields. Additional conversion of grasslands to various other lands uses may increase mountain plover dependence on these crop fields. Any resulting adverse effects of this change are largely speculative.

Based on a variety of existing and projected trends in land use, the further reduction of grassland and crop fields used by mountain plover for wintering in California seems likely. However, as of 2007, California supported over 25 million ac (10 million ha) of land in farms, including 9.5 million ac (3.8 million ha) of cropland, 5.5 million cattle, and 600,000 sheep (USDA 2010). The mountain plover is a highly mobile species that uses habitat opportunistically in winter. The mountain plover's preference for certain agricultural lands above others is well documented. However, the pervasive expanse of agriculture throughout the Central Valley and Imperial Valley suggests to us that, while current and foreseeable future changes may reduce favored wintering habitat, the quantity and variety of agricultural habitat remaining in California will continue to provide sufficient wintering areas for the mountain plover.

(57) *Comment:* One commenter noted that in the Imperial Valley, an important wintering area for mountain plover, the

area of bermudagrass and alfalfa (crops favored by the mountain plover) has declined.

Our Response: Both bermudagrass and alfalfa show recent declines in area from 2005 to 2009 (Imperial Irrigation District (IID) 2010). While area devoted to all hay (including bermudagrass and alfalfa) in the Imperial County varies yearly, 233,000 ac (90,000 ha) were present in both the 1997 and the 2007 (USDA Census of Agriculture (USDA) 2010). We do not have evidence indicating the likelihood of long-term future declines in acreage devoted to these two crops.

(58) *Comment:* One commenter noted that the wintering range of the mountain plover in Texas is not well described and that the species' occurrence in Texas is variable. There was concern that habitat needs were not understood and that Texas populations were not receiving the attention they merited.

Our Response: We agree that knowledge of mountain plover wintering in Texas has been scant (as described in Conservation Status and Local Populations above). Distribution is largely limited to private lands where land use has varied little and where few threats are known. New efforts to survey abundance and habitat use of mountain plover in Texas are currently under way.

Pesticides

(59) *Comment:* Some commenters expressed concern that use of pesticides to control grasshoppers (family Acrididae) and the Mormon cricket (*Anabrus simplex*) reduces foods that sustain breeding mountain plover, especially chicks, in the mountain plover's breeding range.

Our Response: Efforts to control grasshoppers and Mormon crickets are generally limited to suppressing populations in years and in areas where infestations occur, and have the goal of reducing densities to limit economic impacts. While at times local mountain plover populations could be affected by these activities, we do not believe that grasshopper and Mormon cricket control represents a significant threat to mountain plover populations. See our further discussion under *Factor E* below.

Climate

(60) *Comment:* Some commenters suggested that climate change could bring warmer and drier conditions that may benefit mountain plover breeding.

Our Response: Mountain plover breeding numbers and breeding success can vary greatly based on a number of factors, including annual weather variation. Anticipated changes in climate will alter annual norms of temperature and precipitation, but those changes will likely vary across the mountain plover's breeding and wintering range (see discussion under *Factor E* below). Overall, we believe it is speculative to conclude that these effects will be beneficial to the mountain plover.

Conservation Efforts and Effects of Listing

(61) *Comment:* Several commenters noted that conservation partnerships between State agencies, landowners, and conservation groups have promoted conservation of mountain plover and that listing would negate some gains in cooperation.

Our Response: We agree that partnerships are important to the conservation of the mountain plover, especially in those States where mountain plover occur mostly on private lands. The concern that such partnerships could be affected by listing is legitimate, but is not a factor evaluated when determining whether a species warrants listing under the Act.

(62) *Comment:* One commenter suggested that traditional land uses on private land would continue even if listing occurred. Another commenter suggested listing under the Act would decrease the ability to effectively manage habitat, slowing management response to changing science and conditions on the ground. A third commenter suggested listing would provide impetus for needed research.

Our Response: We agree that listing under the Act could lead to multiple outcomes, including those above. We considered all available scientific and commercial information in making our determination as to whether the mountain plover is currently, or may in the foreseeable future become, in danger of extinction.

(63) *Comment:* Several commenters emphasized the importance of developing a special rule under section 4(d) of the Act to exempt certain activities from the take provisions of the Act should the mountain plover be listed.

Our Response: In our June 29, 2010, document (75 FR 37353) we addressed the possible development of a special 4(d) rule if the mountain plover were listed as threatened. The intent was to develop a mechanism by which agricultural practices that might result in take, but were believed to have no net adverse impact on the mountain plover, could continue. Development of such a rule would allay some concerns associated with listing and would contribute to continued cooperation efforts with private landowners. Were we to determine that the mountain plover met the definition of a threatened species, we would consider developing a special rule under section 4(d) of the Act. However, because we determined that the species does not warrant listing, the consideration of a special 4(d) rule is not necessary.

Summary of Information Pertaining to Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

The February 16, 1999 (64 FR 7587), proposed listing rule provided a description of threats affecting the mountain plover under the five listing factors identified in section 4(a)(1) of the Act. The December 5, 2002, proposal (67 FR 72396), which was described as a "supplemental proposal," provided pertinent new information. Both of the proposed rules concluded that the mountain plover was likely to become an endangered species in the foreseeable future unless measures were taken to reverse its decline. Conservation measures to reverse the decline were discussed in both of the proposals.

In our February 16, 1999, proposed rule to list the species (64 FR 7587) and our December 5, 2002, proposed rule to list the species (67 FR 72396) we described a number of potential threats to the mountain plover. We cited historical decline in the black-tailed prairie dog (98 percent range wide) and its effect on mountain plover habitat. We described effects of past rangeland loss to agricultural conversion (30 percent of the Great Plains) and more recent conversion at specific mountain plover breeding sites. We addressed residential expansion into a mountain plover breeding area in South Park, Colorado, and stated that buildout of private lands would be detrimental. We hypothesized that cultivated areas used for breeding by mountain plover may

act as a "population sink" and that this could impact population viability. We expressed concern over the rising trend in oil, gas, and mineral exploration in mountain plover breeding habitat and, while we suggested habitat changes might not be detrimental, we cautioned that roads and human disturbance could impact mountain plover breeding. We cited potential impacts of both historical loss of grasslands and changing agricultural practices on mountain plover wintering areas in California. With the Imperial Valley growing in importance to wintering mountain plover, we suggested that water conservation, water transfer projects, burning restrictions, urbanization, and resulting modification of agricultural practices in the Imperial Valley could be detrimental to mountain plover populations. In our 1999 and 2002 proposals we also expressed concerns regarding the mountain plover's average life span and breeding site fidelity as factors potentially impacting persistence of local breeding populations. We described a short average life span as limiting opportunities for mountain plover to reproduce. We also suggested that high site fidelity and the specific breeding habitat that mountain plover required limited opportunities to disperse to new breeding sites should former breeding areas turn inhospitable. We addressed concerns over mountain plover exposure to pesticides; however, we documented no deleterious effects.

In the nine years since our 2002 proposal, substantial new information has been developed regarding the mountain plover and potential threats to its existence. Our December 3, 2009, 12-month finding on a petition to list the black-tailed prairie dog summarized new information on the species and provided a basis for us to assess whether threats to black-tailed prairie dog may, in turn, affect the mountain plover (74 FR 63343). We now believe that the black-tailed prairie dog is a resilient species and that, overall, populations in the mountain plover breeding range are not likely to decline. Recent data confirms that rangeland conversion to agriculture remains insignificant across the mountain plover's breeding range. Of the States where we previously documented rangeland declines, none have experienced significant decline in rangeland in recent years. Expanded human development of mountain plover breeding habitat in South Park, Colorado, did not proceed as previously anticipated, and is not expected to do so in the foreseeable future. Mountain plover use of cultivated lands has been further investigated, providing insight into the value of crop lands to breeding mountain plover. It now appears that perhaps one quarter of the rangewide mountain plover population breeds in crop fields and little evidence has surfaced to suggest that is problematic. Energy production in mountain plover habitat continues to expand, including increased development of oil and gas, and wind energy projects. Studies to date have not documented adverse impacts of oil and gas development, or wind energy projects. Effects of such projects on mountain plover merit continued study, largely because of their potential future scope. In California, land use changes continue in the Imperial Valley and elsewhere. However, based on current rangewide mountain plover population estimates (over 20,000 breeding birds) we now believe that the majority of mountain plover winter in areas other than California. We conclude that even with reduction of California wintering habitat, sufficient area of wintering habitat will remain, in California and elsewhere, to support current populations. Life span, site fidelity, and dispersal of both adult and juvenile mountain plovers have been further investigated. Contrary to our previous belief, the mountain plover is now considered a relatively long-lived species. Results of genetic research provide evidence that mixing among mountain plover breeding populations is occurring. Dispersal, especially by returning one year old mountain plover, appears significant. Site fidelity and the mountain plover's ability to seek out alternative sites for breeding are no longer of concern. While substantially more information has been developed regarding exposure of mountain plover to pesticides, no evidence of actual impacts to individuals, or suggestions that pesticides are having local or rangewide impacts to the species have surfaced.

The following summary builds on scientific and commercial information presented in our 1999 and 2002 proposals and provides our current analysis based on all information currently available.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Recent summaries of the mountain plover's status (Dinsmore 2003; Knopf and Wunder 2006; Andres and Stone 2009) have highlighted the loss or degradation of mountain plover habitat as the greatest threat to the species. The primary issues that have been raised are potential loss of prairie dog populations and the mountain plover habitat they create; loss of native prairie and rangeland habitats; cropland breeding habitat as a potential reproductive sink; oil, gas, and mineral development; wind and solar energy development; loss and changes to wintering habitat in California; livestock grazing practices; and urbanization. We address these below.

Threats to Prairie Dogs and Associated Loss of Habitat

Much of the mountain plover breeding range described above follows the range of the black-tailed prairie dog on grasslands of the Great Plains from Canada to Mexico. To a lesser extent, mountain plover also breed within the ranges of the white-tailed, Gunnison's, and Mexican prairie dogs. Mountain plover often nest in black-tailed prairie dog colonies at densities greater than in other habitats (Childers and Dinsmore 2008, p. 707; Tipton *et al.* 2009, p. 496), and mountain plover numbers have been shown to track changes in prairie dog abundance brought on by sylvatic plague (Dinsmore *et al.* 2005, pp. 1550–1551; Augustine *et al.* 2008, unpaginated; Dinsmore and Smith 2010, pp. 42–44). A common recommendation regarding conservation of the mountain plover is to assure the maintenance or expansion of black-tailed prairie dog populations and the landscapes they create (Dinsmore *et al.* 2005, p. 1552; Augustine *et al.* 2008; Knopf 2008, p. 61; Andres and Stone 2009, p. 35; Dinsmore *et al.* 2010). Current and future threats to the distribution and abundance of prairie dogs, especially the black-tailed prairie dog, may in turn be threats to the mountain plover.

On December 3, 2009, the Service published a 12-month finding on a petition to list the black-tailed prairie dog as endangered or threatened under the Act (74 FR 63343). We found listing to be not warranted. Here, we rely heavily on the analysis and results of that finding to assess the potential threat to the mountain plover from current or future loss of breeding habitat in the United States that is created and maintained by the black-tailed prairie dog.

In our December 5, 2002, proposal to list the mountain plover we discussed historical reduction of the black-tailed prairie dog numbers, but not current populations or recent population trends (67 FR 72402). In our 2009 finding regarding the black-tailed prairie dog, we estimated that 2.4 million ac (1 million ha) of occupied black-tailed prairie dog habitat exists in a shifting mosaic over time, throughout an estimated 283 million ac (115 million ha) of suitable habitat. We evaluated

recent trends in occupied habitat and considered occupied habitat an appropriate surrogate for the status of the species. Rangewide, we estimated historical occupied area of black-tailed prairie dog colonies to be between 80 million ac and 104 million ac (32 to 42 million ha), almost all in the United States. Occupied area in the United States had decreased to a low of 364,000 ac (147,000 ha) by 1961 (largely because of eradication efforts), and subsequently increased to the 2.4 million ac (1 million ha) cited above. Throughout the United States, this represents a 600 percent increase in estimated black-tailed prairie dog numbers from 1961. See our December 3, 2009, finding (74 FR 63343) for the methods used to arrive at these estimates and cautions regarding their accuracy.

The following evaluation of black-tailed prairie dog status highlights the three States, Colorado, Montana, and Wyoming, which have the greatest number of breeding mountain plover associated with black-tailed prairie dog colonies. In Colorado, occupied black-tailed prairie dog habitat historically existed in the eastern half of the State, east of the Front Range Mountains (Hall and Kelson 1959, p. 365). Currently, the distribution of the black-tailed prairie dog is scattered in remnant populations throughout at least 75 percent of the historical range (Van Pelt 2009, p. 14). The most recent estimate of occupied habitat is 788,657 ac (319,158 ha) (Odell *et al.* 2008, p. 1311). This is approximately one-third of all currently occupied black-tailed prairie dog habitat in the United States, and is an eight-fold increase over occupied habitat thought to be present in Colorado in 1961.

The Conservation Plan for Grassland Species in Colorado (Conservation Plan) (Colorado Division of Wildlife 2003, p. 1) has a goal "to ensure, at a minimum, the viability of the black-tailed prairie dog and associated species (mountain plover, burrowing owl, swift fox, and ferruginous hawk (*Buteo regalis*)) and provide mechanisms to manage for populations beyond minimum levels, where possible, while addressing the interests and rights of private landowners." The Conservation Plan includes a species account for mountain plover, but does not provide any regulatory protections for the species or its habitat.

In Montana, where mountain plover are strongly associated with prairie dog colonies (Childers and Dinsmore 2008, p. 701), black-tailed prairie dog occupied habitat historically existed in the eastern two-thirds of the State, with the exception of the northeastern corner of the State (Hall and Kelson 1959, p. 365). Current prairie dog distribution is scattered in remnant populations over 90 percent of the historical range (Van Pelt 2009, p. 20). Currently, 193,862 ac (78,453 ha) of occupied habitat are estimated to occur in Montana (Hanauska-Brown 2009). This represents nearly a seven-fold increase over occupied habitat thought to be present in Montana in 1961.

In Wyoming, the black-tailed prairie dog historically occupied habitat in the eastern half of the State, east of the Rocky Mountains (Hall and Kelson 1959, p. 365). Currently, distribution is scattered in remnant populations throughout at least 75 percent of the historical range (Van Pelt 2009, p. 40). A 2006 study estimated the amount of occupied habitat to be 229,607 ac (92,919 ha) (Grenier *et al.* 2007, p. 125) and these results suggested that black-tailed prairie dog populations in Wyoming remain stable (Emmerich 2010, pers. comm.). This represents nearly a five-fold increase over occupied habitat thought to be present in Wyoming since in 1961.

In the past, the conversion of native prairie habitat or rangeland to cropland reduced black-tailed prairie dog colonies, and thereby impacted the mountain plover's most productive breeding habitat in the grassland ecosystem. Conversion of native prairie to cropland historically progressed across the Great Plains from east to west. The most intensive farming activity remains in the east, in portions of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, where higher rainfall amounts and generally better soils result in greater agricultural production, and the land supports crops such as corn and soybeans. This land conversion resulted in the historical reduction in black-tailed prairie dog populations; as well as reductions in mountain plover populations in Nebraska, Kansas, Oklahoma, and Texas; it also resulted in the extirpation of the mountain plover populations in North Dakota and South Dakota. Land with the highest potential for traditional farming uses was converted many years ago. The threat of future destruction of both prairie dog and mountain plover habitat through cropland conversion is minimal, much less than in the early days of agricultural development in the Great Plains (see Loss of Breeding Habitat to Land Conversion and Development, below).

The present or threatened alteration of habitat due to oil, gas, coalbed methane, and mineral extraction, and wind energy development, affects portions of black-tailed prairie dog occupied habitat; however, we have no information regarding the extent of potential impacts. Nevertheless, prairie dog occupancy has apparently increased within oil and gas development areas in Wyoming (Sorensen *et al.* 2009, pp. 5–6). We have no evidence that present or threatened curtailment of habitat due to oil, gas, coalbed methane, and mineral extraction, and wind energy development, is a limiting factor for the black-tailed prairie dog in Wyoming or elsewhere throughout its range.

Approximately 110 million ac (45 million ha) of cropland and 283 million ac (115 million ha) of rangeland occur within the black-tailed prairie dog's range at present (Ernst 2008, pp. 10–19). In our December 3, 2009, finding for the black-tailed prairie dog (74 FR 63343), we contrasted the 2.4 million ac (1 million ha) of currently occupied habitat with the 283 million ac (115 million ha) of rangeland and concluded that sufficient potential habitat still occurs within the range of the species in the United States to accommodate large expansions of prairie dog populations (which in turn would benefit the mountain plover) if the landowners and public sentiment allow. We concluded that the present or threatened destruction, modification, or curtailment of habitat or range is not a limiting factor for the black-tailed prairie dog and that we do not anticipate that impacts from habitat loss are likely to negatively impact the status of the species in the foreseeable future. Because of the association between the mountain plover and the black-tailed prairie dog, we believe that appropriate habitat to support prairie dog colonies is not a limiting factor within the breeding range of the mountain plover.

Sylvatic plague is an exotic disease foreign to the evolutionary history of North American prairie dogs. It is caused by the bacterium *Yersinia pestis.* Black-tailed prairie dogs are very sensitive to sylvatic plague, and mortality in colonies affected frequently reaches 100 percent. Sylvatic plague has expanded its range to all States within the range of the black-tailed prairie dog in recent years and has caused local population declines at several sites. These declines are typically followed by partial or complete recovery. Rangewide and Statewide estimates of prairie dog occupied area did not include unoccupied prairie dog colonies where sylvatic plague (or poisoning) had at least temporarily eliminated prairie dogs. Over all prairie dog colonies, unoccupied area was found to total 12 percent in Colorado, 15 percent in Montana, and 13 percent in Wyoming. The BLM mapped prairie dog colonies

in Phillips County, Montana in 2004 and 2005, and returned to 50 randomly selected prairie dog colonies in 2010. Of the 50 colonies selected for sampling, 48 were still active in 2010 (McDonald 2010). In the changing mosaic, colonies lost or temporarily inactive may be offset by colonies reoccupied or newly established.

We documented in our 12-month finding on a petition to list the black-tailed prairie dog that, since the early 1960s, occupied black-tailed prairie dog habitat has increased in every State, even in those States where sylvatic plague has been present for over 50 years (74 FR 63355–63356). This increase has occurred despite continued impacts from sylvatic plague and other threats. In our 2009 finding, we concluded that the status of the black-tailed prairie dog, as indicated by increased occupied habitat since the early 1960s, indicates that sylvatic plague is not a limiting factor for the species (74 FR 63357).

Similarly, the increase in black-tailed prairie dog numbers in the United States has occurred despite conflicting Federal and State regulations and policies that encourage conservation of prairie dogs through development of State and rangewide management plans, yet in many cases continue to allow shooting and poisoning of prairie dogs. Nevertheless, affected Federal and State agencies are engaged in black-tailed prairie dog management and monitoring to a much greater extent than they were 10 years ago.

Efforts to conserve the black-tailed prairie dog will likely be beneficial to the mountain plover. Our December 3, 2009, finding for the black-tailed prairie dog (74 FR 63343) described the 1998 establishment of the Black-tailed Prairie Dog Conservation Team, with representatives from each State within the historical range of the species, and the development of "The Black-tailed Prairie Dog Conservation Assessment and Strategy" (Van Pelt 1999, entire), which initiated development of "A Multi-State Conservation Plan for the Black-tailed Prairie Dog, *Cynomys ludovicianus,* in the United States" (Multi-State Plan) (Luce 2002). The purpose of the Multi-State Plan was to provide adaptive management goals for future prairie dog management in the 11 States within the species' range. The plan identified 10-year target objectives including maintaining and increasing occupied acreage of black-tailed prairie dog habitat, and increasing the number of large prairie dog complexes. The States also agreed to draft Statewide management plans for the black-tailed prairie dog. The States approve their own Statewide management plans. Colorado and Wyoming have finalized grassland conservation plans that support and meet the objectives of the Multi-State Plan. However, Montana is among the States that have finalized management plans that do not support or meet all of the objectives of the Multi-State Plan. These and other efforts give promise that the trend of increasing black-tailed prairie dogs populations since 1961 can be sustained.

Climate change will likely affect black-tailed prairie dogs and their habitat; however, at this time we have no information on the direct relationship between climate change and black-tailed prairie dog population trends, and we cannot quantify the potential magnitude or extent of impact that climate change may have on the species. While climate change may potentially impact the species in future decades, particularly through its effects on sylvatic plague, it is not apparent that a net loss in occupied habitat will result. The current status of the black-tailed prairie dog does not suggest that the combined effects of sylvatic plague and climate change are currently limiting factors for the species or that they will become so within the foreseeable future, and we do not believe climate change will result in significant population-level impacts to the black-tailed prairie dog.

In summary, we believe that the black-tailed prairie dog is a resilient species and that overall United States populations are not expected to be significantly affected by habitat loss due to conversion to cropland, sylvatic plague, shooting, poisoning, or climate change (74 FR 63364, December 3, 2009).

Mountain plover populations in Montana, and to a lesser extent other breeding areas, are dependent on the prairie dog for breeding habitat. Given our conclusion that habitat created or enhanced by black-tailed prairie dogs is unlikely to decrease, we conclude that threats to the black-tailed prairie dog in the United States do not represent a threat to the continued existence of the mountain plover.

Potential dependence of both wintering and breeding mountain plover populations on remaining prairie dog colonies in Mexico is of concern (Macias-Duarte and Panjabi 2010, pp. 9–10). In Mexico, decline of native grasslands supporting the black-tailed prairie dog and the Federally endangered Mexican prairie dog have been extensive, despite some environmental regulations designed to protect prairie dogs and their habitats. The large black-tailed prairie dog complex at Janos has been reduced by 73 percent since 1988, to approximately 38,000 ac (16,000 ha), while Mexican prairie dog colonies within the El Tokio region have also been reduced to approximately 79,000 ac (32,000 ha) (Andres and Stone 2009, p. 28; Ceballos *et al.* 2010, pp, 7–8; Macias-Duarte and Punjabi 2010, p. 9–10). Both areas, at least in some years, support significant numbers of wintering mountain plover (see Conservation Status and Local Populations above). Destruction and fragmentation of prairie dog colonies has occurred through poisoning and shooting of prairie dogs, conversion to cattle ranching or farming, overgrazing, and drought. Mexico experienced a prolonged drought in the Janos area in recent years, which resulted in dramatic loss of vegetation, followed by a reduction in black-tailed prairie dog occupied habitat (Larson 2008, p. 87).

These losses in prairie dog habitat in Mexico have degraded or eliminated the extent of wintering plover habitat in these areas. Recent efforts to protect prairie dogs and grasslands also benefit wintering mountain plover and may help stop or reverse recent trends. Government designation of protected areas in Chihuahua and Nuevo Leon, and efforts by Pronatura Noreste, The Nature Conservancy, and other institutions, hold promise (Andres and Stone 2009, pp. 33, 40; Macias-Duarte and Punjabi 2010, p. 10). In 2009, the 1.3-million-ac (526,000-ha) Janos Biosphere Reserve was established to protect some of the best remaining shortgrass prairie in Mexico and thereby benefit the black-tailed prairie dog. This conservation initiative is led by Mexico's National Protected Areas Commission and the Chihuahuan State government (The Nature Conservancy 2010). The Llano de la Soledad, which encompasses the major Mexican prairie dog complexes of the El Tokio area, a 26,000-ac (10,500-ha) area, has been designated a State Natural Area for Ecological Conservation administered by the Agency of Environmental Protection and Natural Resources of Nuevo Leon. Neotropical migratory bird grants from the Service have supported efforts led by Pronatura Noreste to protect and manage key lands through purchase and easement. While past habitat loss for the mountain plover at Janos and El Tokio has been significant, international attention to these and to other important grassland complexes in Mexico improves prospects for future conservation and maintenance of mountain plover wintering habitat.

Knowledge of mountain plover breeding on prairie dog colonies in Mexico is limited. The primary known

value of black-tailed and Mexican prairie dog colonies to the mountain plover is as wintering habitat; yet use varies greatly from year to year. Mountain plover use of croplands and rangelands present in Mexico for wintering is largely unstudied. For example, agricultural areas in northern Baja California, the coastal plains of Sonora and Sinaloa, and throughout the northern Chihuahuan Desert States may potentially support substantial wintering populations (Macias-Duarte and Punjabi 2010, p. 10). The net effect of reduction in prairie dog colonies in Mexico to mountain plover is largely unknown. However, given that mountain plover winter extensively in cropland habitats in California and Texas, we believe that cropland habitats in Mexico are likely available as alternative wintering habitat. There is no available information to indicate that the past, current, or potential future loss of black-tailed and Mexican prairie dog colonies and the ecosystems they support in Mexico is a significant threat to the mountain plover.

Despite the ongoing effects of habitat conversion, sylvatic plague, shooting and poisoning, and lack of regulatory mechanisms that provide protection, black-tailed prairie dog habitats have increased in the United States over the last 50 years (74 FR 63343, December 3, 2009). Although there is significant concern about the status of black-tailed and Mexican prairie dogs and their habitats in Mexico, there is no information available to indicate that further reductions in prairie dogs in Mexico are threatening the mountain plover. At this time, the best available scientific information does not indicate that the loss of prairie dog habitat is likely to threaten the mountain plover now or in the foreseeable future.

Loss of Breeding Habitat to Land Conversion and Development

As described above, losses of native grasslands in the Great Plains have been severe since European settlement. Losses of these native grasslands have been greatest in the eastern Great Plains and have impacted the mountain plover mainly from conversion of prairie grasslands to crop fields incompatible with mountain plover breeding, including those planted to corn and soybeans. These losses are likely the reason why the mountain plover no longer breeds in the Dakotas, has a limited range in Nebraska, and is now a rare breeder in Kansas (Graul and Webster 1976, p. 266; Knopf and Wunder 2006). Land conversion to agriculture continues, primarily in the northern Great Plains, but at a much slower rate. Over the 15-year period from 1982 to 1997, in Montana, Wyoming, and Colorado, there were no decreases in the amount of rangeland or pastureland present (USDA 2010). Conversion to cropland may be locally affecting mountain plover in some areas of Montana. Approximately 47,000 ac (19,000 ha) of native grassland was converted to agriculture in Montana from 2005 to 2009 (Ducks Unlimited, *cited in* McDonald 2010). Statewide, the amount of cropland in Montana increased by about 3 percent from 1997 to 2007 (USDA 2010). In the four Montana counties with the most mountain plover habitat (Blain, Fergus, Phillips, and Valley Counties), cropland increased over the same period by about 6 percent, with most of the increase attributable to Valley County (USDA 2010). However, the cited conversion from 2005 to 2009 represents less than 0.2 percent of the 30 million ac (12 million ha) of "grassland/herbaceous" cover present in Montana in 2001 (USGS 2001). Cropland is used by breeding mountain plover elsewhere, but its potential for use in Montana is unknown. Conversion of grasslands to cropland in Montana may locally impact mountain plover; however, we believe this low rate of conversion would have negligible rangewide effect.

The best information available does not allow us to estimate the specific amount of occupied grassland breeding habitat for mountain plover that has been converted to other uses in recent years. However, given the apparent low rate of grassland conversion in Montana and rangewide, and the mountain plover's ability to use grassland that has been converted to other uses such as certain agricultural crops including wheat, sorghum, and millet, we believe that grassland conversion does not pose a substantial threat to the mountain plover in Montana, or elsewhere in its breeding range, now or in the foreseeable future.

In our 1999 and 2002 proposals to list the mountain plover as a threatened species (64 FR 7587 and 67 FR 72396, respectively), we also addressed the concern that grassland breeding habitat may be lost to human development. Since the mountain plover's breeding range is extensive, there are undoubtedly instances where human development is and will locally displace the mountain plover. We agree with the conclusion of Andres and Stone (2009, p. 22) that habitat in the mountain plover breeding range is subject to little overall threat from residential and commercial development, because human development is not expected to be very extensive in the largely rural areas of the species' breeding habitat.

An area that generated past concern in our 1999 and 2002 proposals is South Park, Park County, Colorado, an approximately 480,000 ac (200,000 ha) grassland basin where the mountain plover breeding population is estimated to be about 2,300 birds. Much of the mountain plover habitat in South Park is privately owned, and 32 percent of this area has been subdivided (Granau and Wunder 2001, pp. 8–9). Substantial build-out of those properties currently subdivided would be detrimental to mountain plover; however, human population growth in South Park is modest (Nichols 2010, pers. comm.). Many of the subdivisions occurred in the 1960s and 1970s, and have not been developed. Earlier forecasts suggested South Park would have a human population of 10,000 by 2010, but the current human population stands at approximately 3,500 (Nichols 2010, pers. comm.). Issuance of building permits countywide have decreased steadily in recent years, from 297 in 2002 to 70 in 2009 (Carrington 2010, pers. comm.). In addition, land protection and conservation efforts by the BLM, Park County, Colorado Open Lands, and The Nature Conservancy are ongoing in South Park. The BLM (2009a, p. 2) amended their Royal Gorge Resource Area Management Plan for the South Park Subregion in light of new resource goals, including the protection of mountain plover breeding habitat. Their Land Tenure Designation Plan for South Park was modified to keep a greater portion of the BLM's approximately 63,000 ac (26,000 ha) of South Park lands in Federal ownership and make less sensitive BLM lands available for exchange to consolidate Federal lands of highest resource value. Primary goals of Park County's Master Plan include protection of environmentally sensitive areas, and managing the location and pace of residential growth (Park County 2001, p. 13). In addition, Colorado Open Lands and their partners have preserved approximately 17,000 ac (7,000 ha) of lands in South Park to minimize development in and around significant conservation areas (Colorado Open Lands 2011).

The current level of residential development in South Park is not currently a threat to the mountain plover and, given recent development trends and conservation initiatives, we do not consider residential development in South Park to be a threat in the foreseeable future. Elsewhere, threats from human development are largely limited to wintering habitat.

In summary, we do not believe that conversion of the mountain plover's grassland breeding habitat to cropland, or to human residential and commercial development, represents a threat to the mountain plover now or in the foreseeable future.

Range Management

Breeding mountain plover in grasslands are strongly associated with heavy grazing and soil disturbance (Knopf and Wunder 2006). In the absence of prairie dogs, activities such as heavy cattle grazing, the concentration of cattle at loafing areas and at water, and burning of rangeland provide habitat for mountain plover. However, typical range management practices such as fencing, rotational grazing, decreased stocking rates, and planting nonnative grasses to improve soil moisture promote uniform vegetative cover and taller grasses, which are less beneficial to breeding mountain plover. In addition, human efforts to suppress wildfire are generally detrimental to mountain plover.

Specific range management options for mountain plover are somewhat limited. Cattle grazing provides benefits to mountain plover, but this is especially true when it maintains low vegetation and patches of bare ground. Heavy cattle grazing may not be a financially justifiable option for ranchers and can create conditions unfavorable to many other species of wildlife. Aside from grazing, specific range management options for mountain plover are somewhat limited. Mountain plover use burned areas for breeding, and prescribed burning can be used as a habitat management tool (Knopf 2008, p. 61; Andres and Stone 2009, p. 29). Ongoing USFS burning programs on the PNG and the Comanche National Grasslands in Colorado to attract breeding mountain plover have had some success (Augustine 2010a, pers. comm.). However, primary benefits of burning a site are generally of short duration, *i.e.,* 1 or 2 years (Augustine 2010b, pers. comm.). The value of burning is dependent on the extent and the frequency of burns. Augustine and Malchunas (2009, p. 89) suggested that late winter shortgrass burns may have neutral or positive consequences for livestock, but burning is not a management practice generally employed within the mountain plover's breeding range.

Even without rangeland management that specifically benefits the mountain plover, soil type, site history, or drought may create habitat conditions that are beneficial to breeding mountain plover. Rocky or clay pan substrate may suppress vegetation and provide breeding habitat (Knopf and Wunder 2006). In years of low precipitation, grazing at relatively low intensity has a greater impact on grassland vegetation and can produce habitat conditions favorable for mountain plover breeding.

Knopf (2008, entire) provided an historical account of mountain plover populations on the PNG, Weld County, Colorado, and discussed the future of mountain plover in the area. He suggested that mountain plover numbers in the area had been in decline since the post-dust bowl days of the late 1930s and early 1940s, and that the dramatic decline in the mid-1990s was the abrupt end point of a process of deteriorating mountain plover habitat (recovery of grassland habitat), which was exacerbated by other factors such as wet spring weather and predation (Knopf 2008, p. 60). Given current range management practices, Knopf suggested that short-term benefits from prescribed burning and, more significantly, the maintenance of prairie dog colonies were the only viable means to enhance mountain plover habitat on the PNG.

Sheep grazing can maintain the low vegetation structure that is beneficial to breeding mountain plover. However, the current level of sheep grazing does not maintain significant amounts of mountain plover breeding habitat rangewide. The sheep industry in the United States has been in decline for more than 60 years and now supports about one-tenth of the number of sheep present in the 1940s. Decreases in sheep grazing may have been a contributing factor to loss of favorable grassland breeding habitat for the mountain plover in the past. The future of the industry is uncertain; continued declines in the industry are likely in some areas, but changes in the industry also present opportunities for its growth (National Academy of Sciences 2008, p. 4). For the foreseeable future, it appears likely that sheep grazing will remain a minor rangewide contributor to maintenance of favorable mountain plover breeding habitat, but that potential for any further decline in breeding habitat due to additional loss of acreage grazed by sheep is minimal.

A number of conservation efforts target the conservation of grasslands, prairie ecosystems, and prairie birds: The Great Plains Landscape Conservation Cooperative (a public/private initiative to proactively conserve declining habitats on private lands); The Nature Conservancy's ecoregional plan for the Central Shortgrass Prairie; the Colorado Division of Wildlife's Conservation Plan for Grassland Species and similar efforts in other States; Natural Resources Conservation Service conservation efforts under the Farm Bill; preservation of grasslands via conservation easements, including more than 350,000 ac (140,000 ha) in easements reported by the Colorado Cattleman's Agricultural Land Trust (2010); the Rocky Mountain Bird Observatory's Prairie Partners; and The Nature Conservancy's "Prairie Wings" effort. Many of these initiatives include conservation of the mountain plover, the black-tailed prairie dog, and other species supported by the prairie dog ecosystem.

In summary, the extent to which mountain plover are benefitted by cattle grazing on any given site is determined by the range management practices employed. While some current management practices result in habitat conditions that are not optimal for mountain plover breeding, a large number of mountain plover nest on rangeland. We do not anticipate future changes to the current pattern of range management across the breeding range of the mountain plover that would prove detrimental to the mountain plover and its habitat. The extent to which range management practices could benefit the mountain plover in the future is dependent on conservation of black-tailed prairie dog colonies and, to a lesser extent, on willingness to employ prescribed burning as a range management tool. Grazing by sheep can create favorable breeding habitat for mountain plover. The sheep industry in the western United States has declined over time, but we do not anticipate that future changes in the sheep industry will have a net negative impact on existing mountain plover habitat or be a threat to existing mountain plover habitat in the future.

Cultivated Areas in the Mountain Plover Breeding Range Acting as a Potential Population Sink

Agricultural practices can destroy mountain plover nests and eggs from mechanical treatment (tilling, planting, application of fertilizers and pesticides), and crops growing beyond a certain height may cause nest abandonment (Knopf and Rupert 1999, p. 85; Dinsmore 2003, p. 27). In our 1999 and 2002 proposals to list the mountain plover as a threatened species (64 FR 7587 and 67 FR 72396, respectively), we raised the concern that these activities could create a reproductive "sink," or in other words a situation in which mountain plover are drawn to crop fields for nesting but do not produce viable young at a rate that would sustain the population.

Knopf and Rupert (1999, p. 84) suggested that breeding mountain plover having the opportunity to nest on either agricultural or prairie areas chose both equally. In the eastern Colorado shortgrass prairie ecosystem, mountain plover breeding densities on crop fields were twice as high as the densities found on grasslands without prairie dogs, although only one-fifth as high as the densities found on prairie dog colonies (Tipton *et al.* 2009, p. 496). Based on the area of habitats surveyed and densities of mountain plover estimated, approximately 40 percent of mountain plover may use crop fields for nesting in eastern Colorado. Nebraska studies (Van der Burg *et al.* 2010, pp. 48, 50) suggested a similar percentage of the mountain plover in Nebraska utilize crop fields for nesting. The small, seemingly stable, breeding mountain plover population in Oklahoma was primarily found in plowed or fallow fields, although again the potential of a reproductive sink was raised (MacConnell *et al.* 2009, pp. 31–33). Based on estimates of mountain plover using crop fields in Colorado and Nebraska, together with known use of crop fields in Wyoming, Oklahoma, and Kansas, we conclude that up to one quarter of all mountain plover may utilize crop fields for breeding. Given the significance of crop fields to breeding mountain plover and questions regarding a possible reproductive sink, research is ongoing to better understand the role that crop fields play in support of breeding mountain plover populations (Dreitz *et al.* 2010).

In Colorado, mountain plover hatching success was found to be similar in native grasslands and crop fields, although causes of nest mortality differed between the two habitats (Dreitz and Knopf 2007, pp. 684–685). Use of crop fields was not determined to be detrimental to mountain plover hatching success. However, a subsequent eastern Colorado study found chick survival to be similar on crop fields (23 percent) to shortgrass habitat without prairie dogs (24 percent), but lower than chick survival on shortgrass habitat occupied by black-tailed prairie dogs (75 percent), and the author again suggested that crop fields may represent a reproductive sink or "ecological trap" (Dreitz 2009, pp. 875–877). Given the study results, the same concern could be raised regarding shortgrass habitat lacking prairie dogs. In contrast to the study above, recent research on crop fields in Nebraska found 95 percent survival of chicks of adult mountain plover tracked for 35 days (Blakesley and Jorgensen 2010, pers. comm.), although loss of contact with other adult mountain plover suggests that actual chick survival was somewhat lower (Blakesley 2010, pers. comm.). Preliminary data from studies of radio-tracked chicks in Montana and Colorado in 2010 (Dreitz *et al.* 2010) did not show chick survival in crop fields to be lower than in other habitats. While results reported by Dreitz (2009, pp. 875–877) above come from the most comprehensive study of chick survival in crop fields, other studies indicate that mountain plover chick survival rates on crop fields and among other prairie habitats vary greatly in time and place.

Shackford *et al.* (1999, p. 119) suggested that decreasing nest loss from mechanical treatment of fields would benefit mountain plover. Nest marking efforts that allow farmers to avoid nests and reduce nest mortality from agricultural operations have been conducted with cooperating farmers in Colorado and Nebraska (Dreitz and Knopf 2007, p. 685; Lock and VerCauteren 2008, entire; Bly 2010a). The Colorado Division of Wildlife and the Nebraska Game and Parks Commission, along with the Rocky Mountain Bird Observatory, initiated nest marking programs. In Nebraska, a reported 80 percent of 246 nests marked in crop fields over 3 years successfully hatched young (Bly 2010a). As a comparison, an experiment using dummy nests suggested a 35 percent success rate was likely in crop fields if nests were not marked (Bly 2010a).

While recent analysis of mountain plover populations suggests that efforts targeting chick survival may hold more conservation value than those efforts to enhance nest success, management techniques to achieve higher chick survival may be difficult to employ. In addition, nest marking programs have helped establish ties between the agricultural community and wildlife managers (Dreitz and Knopf 2007, pp. 685–686; VerCauteren 2010). Outreach efforts to farmers continue, including education regarding mountain plover and transition from nest marking to landowners' taking the lead in finding and avoiding mountain plover nests in the course of their field operations. Community efforts, such as the annual Mountain Plover Festival sponsored by the Karval Community Alliance in Lincoln County, Colorado, promote stewardship of the mountain plover and other wildlife as an integral part of both farming and ranching practices.

Studies documenting numbers and reproductive success of mountain plover breeding on crop fields in eastern Colorado and Nebraska do not entirely resolve the issue of the relative value of this habitat to the mountain plover. However, in studies from eastern Colorado, nest success in crop fields (Dreitz and Knopf 2007, pp. 684–685) and chick survival in crop fields (Dreitz 2009, pp. 875–877; Dreitz *et al.* 2010) appear similar to nest success and chick survival in native shortgrass without prairie dogs. We conclude that crop fields support breeding mountain plover as well as shortgrass without prairie dogs, although likely not as well as shortgrass with prairie dogs. If the crop fields in eastern Colorado that are regularly occupied by breeding mountain plover are a reproductive sink, their continued occupancy by mountain plover is dependent on a net influx of birds dispersing from other breeding habitats. We have no evidence to suggest whether or not this is occurring. Further, unless mountain plover prefer and choose crop fields for breeding over available (unoccupied) habitat where reproductive success is higher, breeding in crop fields, even if less successful, would not seem detrimental. We conclude that, based on the information available, the mountain plover's use of crop fields for breeding does not represent a threat to the species.

Another concern is the potential that change in current agricultural practices will result in future loss of the types of crop fields that currently provide breeding habitat for mountain plover. Dryland agriculture is the type of agriculture that most frequently supports breeding mountain plover, and it is dominated by wheat, but also includes crops of sorghum, millet, and sunflowers. Annual variation in the use of dryland agriculture fields is dictated by a number of factors including weather, government programs, crop prices, and preferences of individual farmers. It is not known whether any significant future changes to dryland agriculture that the mountain plover uses for breeding are likely to occur or how they would affect mountain plover (Andres and Stone 2009, p. 23).

In recent years, ethanol production from corn has expanded in the United States; however, most corn is cultivated east of the range of the mountain plover (Westcott 2007, pp. 1–3). Additionally, the increase in corn production largely occurs by adjusting crop rotations between corn and soybeans (Westcott 2007, p. 7); neither crop regularly supports mountain plover. We do not anticipate that increased ethanol production will result in a substantial loss in the species' occupied or potential habitat because the majority of this activity lies outside the range of the mountain plover.

In conclusion, we believe that approximately one quarter of the rangewide mountain plover population breeds in crop fields in Colorado, Nebraska, or elsewhere, but there is no evidence that this represents a reproductive sink detrimental to the rangewide population. Dryland agriculture has changed little over recent decades, and we have little evidence to suggest that crop fields now, or in the future, represent a significant threat to the mountain plover.

Energy and Mineral Development

Development targeting oil and gas, coal bed methane, wind energy, and other mineral resources is extensive within the breeding range of the mountain plover. Energy development is a national priority as mandated by Executive Orders 13212 (Actions to Expedite Energy-Related Projects) (66 FR 28357, May 22, 2001) and 13514 (Federal Leadership in Environmental, Energy, and Economic Performance) (74 FR 52117, October 8, 2009), and the Energy Independence and Security Act of 2007 (42 U.S.C. 17001 *et seq.*). Current permitting and construction of new energy projects on Federal and non-Federal lands reflects this priority. The development of energy resources requires construction at well or wind turbine sites, as well as access roads, pipelines, power lines, and other support facilities. These projects could have an immediate effect on breeding mountain plover due to disturbance and habitat conversion, and secondary effects associated with operation and maintenance.

The magnitude of the issue is best exemplified by energy development in Wyoming, where the Wyoming Natural Diversity Database (WYNDD) (2010) has used habitat mapping and mountain plover observation records to map the probability of mountain plover presence. In Wyoming, WYNDD (2010) predicts a high probability of mountain plover occurrence over about 7 million ac (3 million ha) and a medium probability of occurrence over about 14 million ac (6 million ha). We evaluated overlap between predicted mountain plover presence and energy development (Lindstom 2010).

As of February 2010, 5,043 wells, approximately 12 percent of operating oil and gas wells in Wyoming (Wyoming Oil and Gas Commission 2010), occurred in areas of high probability of mountain plover occurrence, while 13,266 wells, about 32 percent of wells, occurred in areas with medium probability of mountain plover occurrence. While wells are clustered in well fields, this would equate to one well per about 1,400 ac (560 ha) in areas of high probability of mountain plover occurrence and one well per 1,080 ac (430 ha) in areas medium probability of occurrence. We believe that this represents a relatively low overall potential impact to mountain plover habitat.

Of 13 million ac (6 million ha) of authorized (both developed and undeveloped) BLM oil and gas leases in Wyoming (BLM 2009b), we estimated that 52 percent were in areas of high or medium probability of mountain plover occurrence (or about one-third of all areas of high or medium probability of mountain plover occurrence were under BLM lease).

Areas in Wyoming of wind classes 4 through 7 (a measure of wind resource potential) account for about 6 million ac (2.4 million ha), or about 30 percent, of those areas of high or medium probability of mountain plover occurrence (National Renewable Energy Laboratory 2002). Since additional factors determine development potential, only a portion of these areas would likely see future wind energy development.

Future energy development will depend on whether oil and gas resources are actually present, the location of wind resources relative to consumers, future demand, economic considerations, and environmental regulations. Therefore, it is uncertain to what degree energy projects will be developed in mountain plover breeding habitat in Wyoming, or other portions of the range, in the foreseeable future. However, given our evaluation above, we believe that current and future energy development in mountain plover habitat may be substantial in Wyoming. Existing and proposed oil and gas development and wind energy projects also occur in mountain plover habitat in Montana and the plains of Colorado, as well as in other States within the mountain plover's breeding, migratory, and wintering range. The cumulative total of current and future energy development elsewhere in the mountain plover's breeding range may not approach that likely to occur in Wyoming, but energy development is likely to occur within many breeding areas used by the species. For example, oil and gas development continues in Weld County, Colorado, and renewed exploration is occurring on and near the PNG (Philbrook 2010, pers. comm.), formerly an important breeding area for the mountain plover.

Concerns over impacts of oil and gas development to landscapes and to various wildlife species have prompted environmental review standards (BLM 2010c), and may lead to more widespread use of development practices that minimize impacts. For example, directional drilling, where feasible, has the potential to decrease habitat impacts. Increased piping, product storage in central locations, and remote sensing of wells may reduce vehicular traffic and the impact of roads.

Despite the prevalence of energy development activities throughout the range of the mountain plover, there is little evidence as to whether, or to what extent, the overall effects of energy development are detrimental to mountain plover (Andres and Stone 2009, p. 25). Although oil and gas field development modifies and fragments nesting, brood rearing, and foraging habitats, mountain plover continue to use these areas (Smith and Keinath 2004, p. 36; Carr, in review). For many wildlife species, the principal impact of energy development is fragmentation rather than habitat loss. Energy development, even when extensive, may directly impact only a small percentage of an area. In a study of the Big Piney-LaBarge oil and gas field in the Upper Green River Valley of Wyoming, where well density averaged about one well per 64 ac (26 ha), 97 percent of the landscape was within 0.25 mile (0.40 kilometer) of infrastructure (roads, pipelines, well pads, waste pits), but only 4 percent of the area was directly impacted by oil and gas infrastructure (Morton *et al.* 2004, pp. 10–11). Carr (in review) found that mountain plover located nests in relation to habitat available, rather than avoiding locations of energy development. We have no data to suggest that the mountain plover is impacted by habitat fragmentation, as opposed to habitat loss.

Because the mountain plover generally favors disturbance that reduces vegetative cover and exposes bare ground (*e.g.,* prairie dogs, grazing, fire), it may tolerate surface disturbance from energy development (Andres and Stone 2009, p. 25; Carr, in review). In Utah, disturbed areas around oil well pads reportedly created open habitat with bare ground suitable for the mountain plover (Day 1994, pp. 298–299). Manning and White (2001, p. 226) found all mountain plover nests in Utah to be situated near roadways or oil well pads, and saw adults and chicks using these areas for foraging both day and night. However, they suggested that while mountain plover tended to choose nest sites near surface disturbance, the overall impact of oil and gas expansion could be negative (Manning and White 2001, p. 226). This small, apparently isolated Utah population subsequently

declined, and no birds have been found during surveys of the area since 2003 (Maxfield 2010, pers. comm.). Decline of the population occurred subsequent to oil and gas development, but no direct tie was established. Severe drought and cessation of sheep grazing that provided mountain plover breeding habitat may have been more significant to the apparent loss of this local population (Maxfield 2010, pers. comm.).

Carr (in review) provides the only targeted study of mountain plover response to oil and gas development. The USGS study evaluated the effects of oil and gas development on mountain plover population density and nesting success in mixed desert shrublands in Wyoming. Results suggested that the presence of wells, roads, and associated infrastructure at densities studied (up to 8 wells per square mile (3 per square kilometer)) did not have detectable negative effects on breeding mountain plover (Carr, in review). Carr (in review) concluded that energy development at low to moderate levels may be compatible with nesting mountain plover, although the author suggested the need for additional studies of potential effects of energy development on chick survival and potential for impacts at higher well densities.

Tolerance to disturbance from energy development by mountain plover could result in nesting or foraging in areas where continued human disturbance and vehicular traffic could pose threats to adults and chicks. Carr (in review) cautioned that human activities at well sites might keep mountain plover from their nests, subjecting eggs to possible overheating. In Oklahoma, mountain plover appeared unaffected by the presence of roads (MacConnell *et al.* 2009, p. 33). Manning and White (2001, p. 226) indicated that vehicular traffic did not influence incubation or foraging behavior, and, while vehicular collisions with mountain plover might be a concern, no such mortalities were noted. Andres and Stone (2009, pp. 26, 27) noted that mountain plover are tolerant of vehicles, and while there is potential that vehicles could kill adult or juvenile birds, such mortality would not likely have a population-level impact. In addition, collisions with stationary structures such as power lines have been discounted as not likely a significant cause of mortality (Knopf and Wunder 2006; Andres and Stone 2009, p. 26).

Other impacts of energy development on the mountain plover and its habitat could occur. These include a potential for increase in predators, increased opportunity for spread of invasive plants, and potential changes in human land use such as cessation of grazing. Despite these concerns, to date, impacts of oil and gas development at levels typically seen in mountain plover breeding habitat have not been shown to decrease mountain plover populations.

Coalbed methane extraction is a process in which: (1) Wells are drilled into the coal seam; (2) the seam is dewatered; and (3) the methane is then extracted from the seam, compressed, and piped to market. In Wyoming, some water from coalbed methane operations is used for surface or subsurface irrigation of agriculture fields and rangeland. There is concern that plover habitat, including prairie dog colonies, have been and could be lost to these practices, thereby altering or eliminating important mountain plover habitat (Rogers 2010, pers. comm.). In the Powder River Basin, about 2,000 ac (800 ha) of such irrigation is occurring and more than 7,000 ac (3,000 ha) is permitted (Fischer 2010, pers. comm.). We have no information as to whether or not mountain plover have been displaced. While changes in habitat caused by this irrigation may alter habitat and cause a local impact to mountain plover, we do not believe that the relatively small area involved represents a threat to overall mountain plover populations in this region.

Like oil and gas development, wind energy development presents a range of habitat changes and disturbance factors that could affect the mountain plover. In addition, there is concern that the mountain plover's use of areas may decline during and after construction due to avoidance of wind turbines or increased mortality attributable to collisions, primarily with moving rotor blades. Lock (2010) highlighted the potential for wind energy projects to displace breeding mountain plover, but described the potential threat of mortality from collisions as being of "low certainty."

The most comprehensive study conducted on potential effects of wind power development on the mountain plover came from the facility on Foote Creek Rim in Carbon County, Wyoming, where mountain plover were studied from 1994 (prior to construction) through 2007 (Young *et al.* 2007, entire). The authors suggested that mountain plover habituated over time to the presence of turbines, as evidenced by nesting within 60 feet (ft) (20 meters (m)) of the base of a tower in one instance (Young *et al.* 2007, p. 18).

Wind towers, rotors, and associated meteorological towers pose an added risk that mountain plover may be struck by blades or fly into stationary structures. However, carcass searches at Foote Creek Rim documented no mountain plover mortalities attributable to collisions over the 3 years the studies were conducted. On breeding grounds, mountain plover fly at low heights. In a common courtship display, a male flies only to a height of approximately 16 to 33 ft (5 to 10 m) (Knopf and Wunder 2006). The lowest point of rotor sweep on the Foote Creek Rim site (57 ft (17 m)) was above the typical heights flown by mountain plover during courtship and breeding (Young *et al.* 2007, p. 18). Research at the Judith Gap Wind Farm in Montana found no evidence of mountain plover displacement or fatalities (MacDonald 2010). However, recently we became aware of two mountain plover mortalities from searches of Wyoming wind energy projects (Sweanor 2010, pers. comm.). Because sources of mortality could not be confirmed for either carcass, we do not know whether the birds were struck by rotor blades, collided with towers, or died from other causes. Rotor sweep was 126 ft (41 m) above the ground in both cases, well above heights that breeding mountain plover are thought to regularly fly. At Glenrock Rolling Hills, one of the two sites reporting a mortality, no mountain plover were observed prior to construction of the wind energy project, but nesting occurred after construction, suggesting that nesting habitat may have been created through project disturbance (Sweanor 2010, pers. comm.).

Wind energy development could present a greater potential issue for post-breeding congregations of mountain plover, because hundreds of birds may flock in a single area. However, we have no information regarding behavior of post-breeding flocks that could be applied to the potential threat of bird strikes from wind turbines. Little is known regarding their potential to strike moving blades or stationary structures, although based on mortality studies, shorebirds (plovers, sandpipers, and similar species) do not seem to be at great risk of colliding with turbines or communication towers (Kerlinger 2011, pers. comm.). Wind energy projects have reportedly been constructed and are proposed in South Texas agricultural fields that may overlap with areas used by wintering mountain plover (Cobb 2010, pers. comm.). The potential for mountain plover displacement or collisions in Texas is unknown. In California, wind energy development projects tend to be located on mountain ridges where wind speeds are greater and, therefore, are less likely to impact wintering mountain plover.

One exception is in Antelope Valley, Kern County (California), an area where mountain plover are known to winter. Several wind energy projects have been permitted on a mosaic of desert and agricultural lands. Overall, evidence available does not suggest that wind energy development is likely to displace mountain plover from breeding or wintering areas, or cause direct mortality through collisions to the extent that it would pose a threat to the species.

Surface mining for coal and other minerals can displace mountain plover within the footprint of the work for the duration of the active mining. Whether or not this would result in permanent displacement is dependent on whether and how restoration occurs. We have little site-specific data on impacts of surface mining to nearby mountain plover. Surveys over 28 years at Cloud Peak Energy's Antelope Mine in Campbell and Converse Counties, Wyoming, documented mountain plover's use of the mine permit area and adjacent lands (Green 2010). Mountain plover numbers declined as mining and the footprint of surface disturbance progressed, but in general they showed tolerance to mining activities nearby (Green 2010). In 2010, adult mountain plover and chicks were, for the first time, seen using a reclaimed mine area at the Antelope Mine (Green 2010). Mountain plover can be directly affected by surface mining through temporary or permanent loss of their habitat. However, we do not believe that surface mining, currently or in the future, will impact a significant amount of the mountain plover's breeding range or represent a threat to the species.

The BLM considers the mountain plover, among other species, when evaluating the impacts of energy development on the environment. The BLM, through its Special Status Species program, has developed various management scenarios for the protection of the mountain plover throughout its range. In 2005, the BLM analyzed the potential effects to the mountain plover from management actions approved in Resource Management Plans for the various BLM field offices in Wyoming (BLM 2005). At the time, we concluded that BLM's proactive conservation measures should aid in protecting the species from further decline (Kelly 2007). The conservation measures committed to by the BLM included habitat screening (determining whether habitat might support the mountain plover) and, as appropriate, subsequent surveys for the possible presence of mountain plover prior to approval of ground-disturbing activities; designation of a 0.25-mi (0.40-km) buffer around occupied nests during the nesting season, with restrictions on activities to protect nesting plover; and continued research and census activities targeting the mountain plover on BLM-administered land in Wyoming (BLM 2005). A number of best management practices were also provided, to be considered on a case-by-case basis, to help protect the mountain plover and expand suitable nesting habitat. While these measures are not binding, and on-the-ground conservation efforts likely vary by BLM field office, a proactive cooperative approach between the BLM and the Service in Wyoming has heightened recognition of mountain plover conservation on BLM-administered lands and provides a basis for future cooperation to safeguard the species.

Solar energy projects are likely to displace mountain plover when situated in breeding or wintering habitat. Unlike oil and gas wells or wind turbines, solar collectors are placed so close together that they effectively eliminate the ability of mountain plover to use the habitat. Solar energy development potential is greatest in southwestern States and California and, except for Colorado's San Luis Valley and Northern New Mexico, occurs in areas used mostly by wintering rather than breeding mountain plover. See Changes in Land Use in Mountain Plover Wintering Range below for a discussion of solar energy development.

In summary, potential effects to the mountain plover from energy and mineral development are largely uncertain. Ground disturbance from oil and gas development and wind energy development may, in some cases, enhance or create mountain plover habitat, but whether the net effect of such activity is beneficial or detrimental has not been determined. The risk of significant mortality through mountain plover being struck by rotors of wind turbines appears low. Whether, or to what extent, construction of wind energy projects displaces breeding or wintering mountain plover has not been clearly established. Surface mining displaces mountain plover, at least until an area is restored, and development of solar fields likely results in habitat loss. Overall, more information regarding possible impacts of energy and mineral development to mountain plover is needed. However, the information currently available does not indicate that energy and mineral development threatens the mountain plover now or is likely to do so within the foreseeable future.

Changes in Land Use in Mountain Plover Wintering Range

In our December 5, 2002, proposal to list the mountain plover (67 FR 72396), we emphasized the potential impact to mountain plover populations from changes to wintering habitat in California, including changes stemming from human population growth, changes in agriculture, water availability, and burning restrictions. It now appears that the proportion of the rangewide population of mountain plover that winter in California is far less than previously believed (see Conservation Status and Local Populations above). However, the importance of mountain plover wintering habitat in California has been a continued topic of investigation and interest (Kopft and Rupert 1995; Hunting *et al.* 2001; Wunder and Knopf 2003; Hunting and Edson 2008). Knopf and Rupert (1995, p. 750) cited a high overwinter survival rate of mountain plover in California and their use of agricultural fields, and concluded that long-term population declines were likely attributable to processes on their breeding grounds. Dinsmore *et al.* (2010) concluded that adult survival in winter was high and suggested that conservation and management efforts be directed toward chick survival on breeding grounds and habitat during migration. In contrast, Hunting and Edson (2008, p. 184) attributed both past declines and potential future declines in rangewide plover populations to loss of traditional wintering sites in California. Andres and Stone (2009, pp. 21, 22) stated that effects to the mountain plover from changes to wintering habitat in California's Central Valley were unknown, but also expressed concerns regarding maintenance of quality wintering habitat in the Imperial Valley, where a majority of mountain plover in California are now thought to winter. Below we address current trends and potential changes to the future extent and quality of mountain plover wintering habitat in California.

Concern continues to center on land use trends, conversion of agricultural lands to other uses, and changes in agriculture (Andres and Stone 2009, pp. 22–24; Hunting and Edson 2008, p. 184). Due to population growth in California, more rural and agricultural land is being urbanized. Between 1982 and 2007, approximately 8 percent of California's croplands, 11 percent of the State's pasturelands, and 6 percent of State's rangelands were lost (USDA 2010). However, as of 2007, California still supported approximately 9.5 million ac (3.8 million ha) of cropland,

1.1 million ac (0.4 million ha) of pastureland, and 17.5 million ac (7.0 million ha) of rangeland (USDA 2010).

The dynamic, market-driven nature of agricultural production and changes in cultivation practices in California could affect the availability and quality of wintering habitat for the mountain plover. Another issue is the dependence of California agriculture on irrigation water, some of which is imported from other areas, and its future availability. Future changes in the availability of irrigation water might result from competition with other water uses, the effects of global climate change (see discussion under *Factor E* below), and changes in the characteristics of agricultural lands as a result of improved or more broadly implemented water conservation techniques.

Development of energy projects, especially solar energy, in mountain plover wintering habitat is also a concern in California. California's electric utility companies were required by California statute (Chapter 464, Statutes of 2006) to use renewable energy to produce 20 percent of their power by 2010. Governor Schwarzenegger's Executive Order of November 2008 (#S–13–08) set a higher, more ambitious goal of 33 percent by 2020 (California Energy Commission 2010). On April 12, 2011, Governor Jerry Brown signed Senate Bill 2X into law, requiring that 33 percent of the State's electric generation come from renewable sources by 2020 (Los Angeles Times 2011). A main source of renewable power will be solar energy. A Statewide list of solar energy projects includes over 400 proposals (Brickley 2011, pers. comm.). Many large solar energy projects are being proposed on BLM land, often in desert areas. The BLM, along with the Department of Energy (DOE), is currently in the process of developing a Programmatic Environmental Impact Statement (PEIS) for solar energy development in six southwestern States, including California. The document assesses development of a new solar energy program for siting utility-scale solar energy projects on BLM lands. Any program adopted will have implications for solar energy project siting in mountain plover wintering habitat. A draft of the PEIS was made available for public comment December 17, 2010 (75 FR 78980). Mountain plover are not specifically addressed in the PEIS, but potential impacts to wildlife and appropriate mitigation measures are provided (DOE 2010, pp. 5–73 to 5–96).

As described in Conservation Status and Local Populations above, the California winter range of the mountain plover is primarily in the Central Valley (including the Sacramento and San Joaquin valleys) and the Imperial Valley. The Carrizo Plain in San Luis Obispo County is also recognized as an important wintering site. Other areas where mountain plover are regularly observed include the Panoche and Antelope valleys.

The Central Valley (Sacramento Valley and San Joaquin Valley), Carrizo Plain, Panoche Valley, and Antelope Valley

In the Central Valley, human population growth over the last 20 years has resulted in a declining trend in agricultural area, with a smaller, but corresponding, trend of conversion to urban uses (California Department of Conservation (CDC) 2010). The rate of land conversion to urban uses in the Central Valley increased beginning in 1990. With the exception of Solano County, the human populations of Central Valley counties within the wintering range of the mountain plover all grew faster than the Statewide average between 2000 and 2009 (U.S. Census Bureau 2010).

In the Sacramento Valley, urbanization in Yolo and Solano Counties, the two principal counties supporting wintering mountain plover, has not adversely impacted the mountain plover to date, because known wintering locations are located outside city planning boundaries. However, continued population growth beyond the current planning horizon could potentially threaten individual wintering localities that are close to urban areas, particularly those in areas most proximate to Sacramento.

In the San Joaquin Valley, human population growth has been approximately 17 percent over the period from 1997 through 2010. To date, most of the resulting urban growth has occurred adjacent to, and in the general vicinity of, the towns, such as Modesto, Fresno, and Bakersfield, that developed along Highway 99 in the eastern portion of the San Joaquin Valley (Teitz *et al.* 2005, p. 27). These urban areas are located to the east and outside of the mountain plover's wintering range. To date, urbanization in the western San Joaquin Valley is restricted to the Interstate 5 corridor, which supports few mountain plover. Therefore, we expect it to have little effect on wintering mountain plover. Scenarios developed to gauge effects of future population growth and urbanization suggest that the San Joaquin Valley will experience significant urban growth within the next 35 years; increasing populations will result in scattered urbanization within the plover's wintering range, but the pattern of development will depend on land use planning goals, and potential development of high speed rail (Teitz *et al.* 2005, pp. 45–67).

In the San Joaquin Valley counties (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare), cropland declined by about 3 percent from 1997 to 2007, to about 5.2 million ac (2.1 million ha) (USDA 2010). Crop fields in alfalfa and other hay, favored by mountain plover, were relatively stable and accounted for about one-third of all cropland in the San Joaquin Valley in 2007 (USDA 2010).

While relatively little agricultural land is being lost, conversion from annual agricultural crops to permanent crops that do not provide mountain plover with habitat is significant within the San Joaquin Valley. For example, in the San Luis Unit of the Central Valley Project (CVP), in Fresno, Kings, and Merced Counties, agricultural acreage has increasingly been converted to permanent crops of orchards or vineyards. We estimate the percentage of land in permanent crops at somewhere between 16 percent and 24 percent of the San Luis Unit, compared with 10 percent in 2000. General field observations and land value reports (California Society of Farm Managers and Rural Appraisers 2009, pp. 31–64) suggest that this is a continuing trend, with new orchards displacing cotton and tomato crops in many areas of the Central Valley. In Madera County, some locations formerly utilized by wintering mountain plover have been converted from rangeland to annual crops or to permanent crops such as pistachio trees (Woods 2009, pers. comm.).

Outside of the Central Valley, orchard land in San Luis Obispo County, which includes the Carrizo Plain, a known mountain plover wintering area, rose from 29,000 ac (12,000 ha) to 54,000 ac (22,000 ha) from 2007 to 2009, to about 18 percent of cropland in the county. Conversion to orchard crops in the nearby Maricopa and Cuyama valleys near the Carrizo Plain area have resulted in loss of wintering mountain plover habitat (Sharum 2010). Overall, conversion of annual cropping systems to permanent crops is expected to continue and poses an additional, but unquantified, source of habitat loss for the mountain plover.

As a result of the large-scale irrigation efforts in the western San Joaquin Valley, approximately 1,750,000 ac (710,000 ha) of agricultural lands with shallow groundwater tables have become impaired due to accumulated concentrations of naturally occurring toxic elements, including selenium.

With the passage of the Central Valley Project Improvement Act (CVPIA) in 1992, Federal and State acquisition programs enabled owners to stop farming, or "retire" their privately owned, drainage-impaired agricultural lands as a strategy to reduce drainage problems and address selenium accumulations (Service 1998; USDI 2005). Lands targeted for retirement lie primarily within the San Luis Unit of the CVP along the west side of the San Joaquin Valley where approximately 379,000 ac (152,000 ha) of agricultural land have been identified as contributing to poor water quality. Of these lands, nearly 200,000 ac (80,000 ha) have been proposed for land retirement (USBR 2007), and, to date, more than 100,000 ac (40,000 ha) of agricultural land have been retired within the San Luis Unit. We have no estimate of what proportion of this area may have supported acceptable wintering habitat for the mountain plover or the extent to which it was used by the mountain plover.

A portion of the lands proposed for retirement are expected to be used for drainage reclamation; between 1,280 and 3,300 ac (5,170 and 1,340 ha) of existing irrigated cropland will be converted to treatment facilities and evaporation basins, while 12,500 ac (5,100 ha) of either existing or fallowed cropland will be converted to reuse areas in which crops will be irrigated with selenium-contaminated, agricultural drainwater in order to reduce selenium loads in the agricultural run-off (Service 2006). These areas might threaten some mountain plover with selenium toxicity, as described below in the discussion under *Factor E.* Numerous retired parcels are characterized by dense weedy growth (Cypher *et al.* 2007, p. 28; Service 2006), and are not expected to provide suitable habitat for the plover. Substantial retired acreage has been converted to permanent crops utilizing alternate sources of water. Other retired lands that support grazing or farming may remain suitable for wintering mountain plover.

Due to the historical importance of agriculture in the Central Valley, the valley has the highest percentage of privately owned land in the State. Only 4 percent of Sacramento Valley land and 7 percent of San Joaquin Valley land is public open space. In the Central Valley, a variety of conservation and restoration projects have been implemented to protect natural resources, although 57 percent of such conservation projects report a focus on riparian habitat enhancement (Great Valley Center 2005, p. 30). Twenty-three local and regional land trusts operate in the Central Valley to protect valley wildlife, farmland, habitat, rivers, and native vegetation (Great Valley Center 2005, pp. 30–31). The Service does not have information on the area of specific habitat types that have been protected within the range of the mountain plover or whether these efforts have produced substantial benefits to the species.

In the Sacramento Valley, we have found no planned solar energy development likely to threaten the mountain plover's habitat. However, the legislation cited above (Chapter 464, Statutes of 2006, and Governor Schwarzenegger's Executive Order of November 2008 *(*#S–13–08)) has initiated a significant increase in the planning for solar development in and adjacent to the San Joaquin Valley. Solar developments proposed thus far vary greatly in size: small projects of 100 to 200 ac (40 to 80 ha), to projects of potentially to 30,000 ac (12,000 ha) in size. The Service does not have specific information on mountain plover use of many of these sites, but we conclude that sites will be unsuitable for mountain plover after development.

To date, small projects are proposed for scattered locations across the southern San Joaquin Valley, while large projects have been proposed both within the San Joaquin Valley, and in the Carrizo Plain and Panoche Valley areas. The solar projects proposed on the valley floor are typically situated on active or recently cultivated agricultural lands and several larger projects have been proposed for lands that have been used for livestock grazing.

The Service is currently aware of up to six small solar projects, each approximately 200 ac (80 ha) in size, which are expected within the mountain plover's general wintering range in the southern San Joaquin Valley. The projects will be constructed by Pacific Gas and Electric, a major California utility company. In the San Joaquin Valley, the solar projects proposed on the valley floor are typically situated on active or recently cultivated agricultural lands and several larger projects have been proposed for lands that have been used for livestock grazing. The Service concludes that sites will be unsuitable for mountain plover after development.

Several large proposals are located within the mountain plover's general wintering range. A large 32,000-ac (13,000-ha) park, the Westlands Solar Park, has been proposed for western Fresno and Kings Counties, with an initial phase of approximately 10,000 ac (4,000 ha). It will be constructed on agricultural land that the Westlands Water District has slated for land retirement (Woody 2010). We expect that additional proposals for retired farmland are likely due to the general perception that such lands have few environmental issues.

The Maricopa Sun Solar Complex (approximately 9,000 ac (3,600 ha)) is proposed for agricultural lands in western Kern County near the edge of the plover's winter range. We do not know whether the mountain plover uses the site. Development of the project includes cancellation of a contract to preserve agricultural land. The Draft Environmental Impact Report identifies mountain plover as a potential winter migrant (Kern County Planning and Community Development Department 2010, pp. 1, 4.4–8).

In the Carrizo Plain, San Luis Obispo County, two solar projects have been proposed, including the 4,000-ac (1,619-ha) California Valley Solar Ranch (CVSR) and the 4,500-ac (1,800-ha) Topaz Solar Farm. Both facilities would be located approximately 6 miles north of the Carrizo Plains National Monument, an important natural area for the plover, on a mixture of natural lands, grazing lands, and cropped lands (Aspen Environmental Group 2010, pp. C3–2–C3–3, C6–4). Suitable foraging and roosting habitat for the mountain plover occurs on sites under consideration (Aspen Environmental Group 2010, pp. C6–4–C6–5, C6–11). Mountain plover have been observed on the CVSR site but likely occur sporadically and in low numbers (Boroski 2011, pers. comm.).

The Panoche Valley, an area of about 12,000 ac (5,000 ha) in San Benito County, receives annual use by wintering mountain plovers. A solar project is currently proposed on 3,200 ac (1,300 ha) of potential mountain plover wintering habitat, or about one-third of the potential mountain plover habitat present in the Panoche Valley. Proposed mitigation would preserve and manage other nearby habitat.

The Antelope Valley, an area of approximately 900,000 ac (360,000 ha) in Los Angeles and Kern Counties, supports wintering mountain plover annually, with numbers estimated in the low 100s using crop fields and grasslands (eBird 2010). How much of the valley's area is mountain plover habitat is unclear. The valley is primarily privately owned land, and its proximity to human population centers has generated high interest in renewable energy (solar and wind) development that could reduce mountain plover wintering habitat.

Solar energy projects currently planned in the San Joaquin Valley, the

adjacent Carrizo Plain, and the Panoche and Antelope valleys are likely, over time, to reduce existing mountain plover wintering habitat. A variety of siting considerations, including presence of other wildlife species of concern, and potential mitigation requirements, will dictate the extent to which mountain plover are affected. The Sacramento Valley and Imperial Valley lands used by the mountain plover are less likely to be developed for solar projects. We know of no solar projects are currently planned for agricultural lands known to support mountain plover in the Imperial Valley, discussed below.

As future solar projects are proposed and implemented, we conclude that they will cause some continued loss of mountain plover wintering habitat in California. While cumulative impacts of these projects, and other factors such as urbanization and changes in agriculture, are likely to reduce the total area of wintering habitat available, substantial acreage of appropriate wintering habitat will persist in the Central Valley, Carrizo Plain, Panoche Valley, and Antelope Valley.

The Imperial Valley

As of 2009, about 381,000 ac (154,000 ha) of field crops existed in the Imperial Valley (Imperial Irrigation District (IID) 2009a). The Imperial County has witnessed a decline in annual area used for agricultural purposes from 1984 through 2008 of about 21,000 ac (8,000 ha) or 4 percent (CDC 2010), while the county saw an increase in area used for urban areas in the same period of about 6,000 ac (2,400 ha) or 29 percent (CDC 2010). Urban expansion has accounted for only a relatively small portion of the 4 percent decline in agricultural lands over a period of 24 years. At this rate, conversion of agricultural lands to urban lands in Imperial County has a modest impact.

Habitat in the Imperial Valley believed most important for mountain plover includes alfalfa fields, especially those harvested then grazed by sheep, and bermudagrass fields burned following harvest (Wunder and Knopf 2002, pp. 75–76). Both alfalfa and bermudagrass acreages have declined in recent years (2005–2009) (IID 2009a). However, in 2009, these crops occupied 195,000 ac (79,000 ha) or approximately 51 percent of total field crop acreage in the Imperial Valley (IID 2009a). Area devoted to all hay (including alfalfa and bermudagrass), 233,000 ac (90,000 ha), was the same in Imperial County in both 1997 and the 2007 (USDA 2010). Data available also suggest the number of sheep in the Imperial Valley have declined recently as well but that numbers fluctuate over time. It is not known whether these short-term declines are indicative of future trends.

The continued success of agricultural habitats used by the mountain plover in the Imperial Valley depends on a reliable water supply. The Imperial Valley depends on Colorado River water to irrigate its crops, but there has been increasing pressure for more water to be diverted to urban areas. In 2003, the State of California and water agencies across the State signed the Quantification Settlement Agreement (QSA) to dictate distribution of water from the Colorado River. The settlement allocated 370,000 acre-feet (ac-ft) (456 million cubic meters (cu-m)) of water to urban areas in Southern California and Tribal areas (IID 2010a, p. 2). Most of the 370,000 ac-ft (456 million cu-m) will come from improvements in on-farm water efficiency and improved irrigation technology (IID 2010a, p. 2; Delfino 2006, p. 161).

Under the QSA, Imperial County must also fallow agricultural land, some of which will be transferred to the San Diego Water Authority, and some of which will go to mitigation to restore the Salton Sea (IID 2010a, p. 1). The area of land fallowed depends on the intensity of water use, not farm size (IID 2010b, p. 1). Fallowing will be conducted on a sliding scale. The program began in 2003 with lands fallowed that had been irrigated by under 10,000 ac-ft (1.2 million cu-m) of water, and peaked in 2010 to lands fallowed that had been irrigated by over 80,000 ac-ft (9.9 million cu-m) of water. The program will slowly decline before agricultural fallowing ends in 2017 (IID 2009b). The area of land fallowed in 2009–2010 was about 10,500 ac (4,300 ha) or about 2 percent of agricultural land in the valley. Overall, lands fallowed will reduce the area of crop fields in the Imperial Valley but we have no specific information as to extent to which those fields fallowed provide wintering habitat to the mountain plover.

The future of the QSA is in question. On January 13, 2010, the Superior Court of California found that funding provisions of the QSA were unconstitutional, and officially invalidated the QSA on January 19, 2010 (*QSA Coordinated Cases,* Case No.: JC4353). IID asked for, and received, a stay that temporarily allowed the terms of the QSA to remain in effect (Case No.: JC4353). As of April 2011, a ruling was anticipated before the end of the year (Imperial Valley Press 2011, p. 1). It is unclear what effect the cancellation of the QSA will have on water use and fallowing, given the extreme contention and difficulty in negotiating the 2003 settlement. If the stay does not remain in place, the IID may halt fallowing, as it has been strongly opposed to fallowing as a conservation measure (IID 2010c, p. 1). If the fallowing program remains in place, it could continue as an immediate, but relatively insignificant, threat to mountain plover habitat, as it would only affect a small portion of agricultural fields, with no definitive data indicating if (or how much) fallowing will occur on those croplands that mountain plover frequent.

The yield from alfalfa crops is related to the amount of irrigation the land receives (Hanson *et al.* 2007, p. 1). Alfalfa could thus be more significantly impacted by water use restrictions. In California, revenue for alfalfa is expected to decrease slightly by 2050, decreasing 11 percent Statewide (Howitt *et al.* 2008, p. 11). These statistics take water use into consideration (California Department of Finance 2007, p. 5). In contrast, Bermudagrass is drought-tolerant, and one study showed little decrease in crop yield under drought conditions (Kneebone 1966, p. 96; George *et al.* 1992, pp. 23–24).

Yield and acreage of bermudagrass could be affected by restrictions on burning in the Imperial Valley due to pollution concerns. To comply with California's air pollution restrictions (California Code of Regulations 2001, pp. 80100–80170), the Imperial County Air Pollution Control District (ICAPCD) has set forth rules and regulations (ICAPCD 2010b, pp. 701.1–702.1) governing implementation of a smoke management program (ICAPCD 2010a, pp. 1–37) for agricultural burning. These rules and regulations allow for agricultural burning after the ICAPCD has analyzed several factors: (1) Quantitative and qualitative analysis of meteorological conditions; (2) current smoke complaints; (3) source/receptor consideration; and (4) current air quality levels (ICAPCD 2010b, p. 8). The number of burn days permissible in the areas of Imperial County has declined (California Air Resources Board 2010) since 2003, but the amount of bermudagrass acreage burned in the same period (2003 to 2009) shows little trend and averages about 18,000 ac (7,000 ha) (Lancero, pers. comm.; Cavazos 2010, pers. comm.). Any concern that current burning restrictions limit bermudagrass cultivation appears unsupported by these data.

Future trends in alfalfa and Bermudagrass may largely determine the extent and quality of mountain plover wintering habitat available in the Imperial Valley. While no predictions of

future area devoted to these two crops is available, we do not have any information that would lead us to conclude that their occurrence will significantly decline. Therefore, we anticipate that in the future substantial areas of alfalfa and Bermudagrass fields will remain available to support wintering mountain plover in the Imperial Valley.

Currently, there is no habitat conservation plan (HCP) implemented in the Imperial County. The Imperial Irrigation District is currently working on an HCP, but they have not yet finalized the plan or been issued a section 10(a)(1)(b) permit under the Act (Roberts 2010, pers. comm.); however, in the current draft of the HCP, mountain plover is a covered species.

Individually, urbanization, water restrictions, and trends in agriculture do not appear to pose significant threats to the acreage or quality of wintering habitat available or to the mountain plover's use of the Imperial Valley. However, in the foreseeable future, their combined effects, along with climate change, could appreciably reduce habitat available to mountain plover and potentially affect the nature or extent of wintering mountain plover use of the Imperial Valley.

Mountain plover winter over a large range and in diverse habitats. In our February 16, 1999, proposed rule to list the species we cited sources suggesting that most mountain plover, an estimated 7,000 of a rangewide population of 8,000 to 10,000 birds, wintered in California (64 FR 7587). However, we now believe that less than half of the rangewide population, estimated at over 20,000 birds, winter in California (see Population Size and Trends above). As of 2007, over 18 million ac (7 million ha) in California (about 18 percent of the State) supported cropland, pastureland, or rangeland (USDA 2010). While only a portion of this area provides habitat for the mountain plover in any given winter, the total includes 1.7 million ac (0.7 million ha) of alfalfa, Bemudagrass, and other hay crops that the mountain plover utilizes, including 230,000 ac (90,000 ha) in Imperial County alone. The total also includes 1.1 million ac (0.4 million ha) of pastureland, often used by mountain plover. To exploit these and other wintering habitats, mountain plover are able to move long distances and use various sites as conditions become favorable within a given winter (Knopf and Wunder 2006). Mountain plover appear annually at some favored wintering sites, but site fidelity by individual birds appears low. Birds may also alternate between wintering areas in California and elsewhere in different years. Cumulatively, the potential changes in land uses in California described above will likely result in a reduction of mountain plover wintering habitat in the State. However, given the available agricultural acreage cited above, it is not apparent that even a reduction in California wintering habitat substantially larger than that which we anticipate would significantly affect California's ability to support mountain plover numbers currently wintering in the State. We conclude that any likely reduction of mountain plover wintering habitat in California will not threaten the mountain plover plover's ability to maintain a wintering population in California or threaten the species range wide in the foreseeable future.

Wintering Outside of California

Elsewhere, in the Phoenix area, Maricopa County, and some other wintering sites in southern Arizona, mountain plover have been displaced by growth of human populations (Gardner 2010; Robertson 2010, pers. comm.). Declines are likely to occur in the Tucson area, Pinal County, and perhaps in Yuma County as well, due to increased human populations and, more directly, due to an accompanying reduction in agriculture. Wintering mountain plover populations in Cochise County, where there is less urban development and where the amount of cropland increased from 1997 to 2007 (USDA 2010), will likely remain more stable. Solar energy development is occurring in areas of southern Arizona, but the extent to which projects may overlap mountain plover wintering habitat has not yet been determined.

Both increases in human population and expansion of agriculture are occurring in areas of southern Arizona (Council for Agricultural Science and Technology 2009, pp. 8–12). Rather than the total area urbanized, the extent and nature of future agriculture that is present in southern Arizona and available for mountain plover use will likely dictate the future value of this area to wintering mountain plover. However, water resources are limited, and urban uses may compete with agriculture for available water. Southern Arizona is thought to winter a relatively small portion of the rangewide mountain plover population. We believe that any net future decreases in agricultural lands in southern Arizona will be limited and that these potential future decreases in agricultural lands in southern Arizona will not markedly affect the ability of the area to support these wintering mountain plover.

Other than potential impacts from wind energy development described in Energy and Mineral Development above, we have no information regarding threats to wintering mountain plover from habitat changes in Texas.

Outside of the trends in wintering areas in Mexico described in Threats to Prairie Dogs and Associated Loss of Habitat above, we have little information regarding threats to the mountain plover from wintering habitat changes in Mexico. Based on their wintering habitat preferences in the United States, significant numbers of mountain plover may winter in agricultural areas in Mexico. Possible areas of concentration and the types of agriculture utilized remain undocumented.

Summary of Factor A

The mountain plover occupies a wide geographic range across the breeding, migration, and wintering seasons. The extensive and diverse habitats it utilizes are subject to a number of changes that represent potential threats.

Black-tailed prairie dogs create favorable breeding habitat for the mountain plover in States including Colorado, Montana, and Wyoming. Black-tailed prairie dog numbers have increased by a factor of six since 1981 in States where they are present, and associated mountain plover habitat has likewise increased. We do not anticipate loss of black-tailed prairie dog numbers or the mountain plover habitat they maintain in the foreseeable future.

Current conversion of prairie and grasslands to other land uses within mountain plover breeding habitat appears negligible when viewed from a rangewide perspective. Formerly expressed concerns regarding human development in South Park, Colorado, where a high density of mountain plover breeds, now seem unfounded.

Cattle grazing generally benefits mountain plover breeding habitat, but some range management practices do not create favorable conditions for mountain plover breeding. Specific range management to benefit mountain plover could be employed, but overall we expect current cattle grazing to continue relatively unchanged in the foreseeable future.

Suggestions that cropland use by breeding mountain plover may be detrimental to populations have not been substantiated.

Energy and mineral development alters landscapes, and some activities can adversely impact mountain plover habitat, at least locally and temporally. The mountain plover often benefits from ground disturbance and may tolerate or

benefit from certain development activities. Mountain plover collisions with wind turbines are likely to occur infrequently. Overall, oil and gas extraction, wind power projects, and mineral extraction have not been shown to have significant adverse impacts to the mountain plover.

Wintering mountain plover are wide-ranging, and seek out a variety of grassland, rangeland, crop field, and semi-desert landscapes, from the Gulf Coast to the Pacific Ocean, to meet their needs. Habitat in California and across the mountain plover's wintering range is dynamic, based on yearly weather patterns, grazing levels, crops present, and timing of planting or harvest. Currently available wintering habitat can not be easily quantified, nor can its projected quantity and quality in the foreseeable future be easily predicted. A future net loss of wintering habitat in California appears likely, based on solar development projects and other factors described above, but given the expanse of wintering habitat currently present, it is not apparent that this will have any affect on the number of wintering mountain plover California will support.

Dinsmore *et al.* (2010) assessed factors affecting population growth in the mountain plover in order to target conservation and management efforts. They cited mountain plover adult survival as high in winter and suggested conservation efforts should target increased chick survival on breeding grounds. This is consistent with Knopf and Rupert (1995, p. 750), who concluded that past declines in the mountain plover were attributable to events taking place on the breeding grounds not during winter. We believe that rather than changes in wintering habitat, future changes on the mountain plover's breeding grounds that influence reproductive success will dictate rangewide mountain plover numbers and population trends. The quantity and quality of breeding habitat, and the ability of the mountain plover to successfully reproduce will depend largely on future human land uses, rangeland and cropland management practices, the potential effects of energy development, and the abundance and distribution of prairie dogs. We have no credible evidence to show that future changes in the extent and quality of mountain plover rangewide wintering habitat, of the magnitude likely to occur, would significantly influence their total population or population trend, or that they endanger the species now or would be likely to endanger the species in the foreseeable future.

We conclude that the best information available indicates that the mountain plover is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Mountain plover were historically hunted for human consumption on the Great Plains (Knopf and Wunder 2006). Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712), mountain plover are not legally hunted in the United States, Canada, or Mexico, although Andres and Stone (2009, p. 27) note that some illegal shooting may occur in some areas of Mexico. The extent or significance of any such activity is unknown, but, because we have no information that such illegal hunting activity is widespread, we believe it is unlikely to be a significant threat to the mountain plover's continued existence.

Birders (bird watchers) may seek out mountain plover for viewing. This activity is most likely to occur on a few publicized sites and often takes place from, on, or near roadways. Mountain plover are relatively tolerant of disturbance and often ignore humans in vehicles. If approached on foot they quickly retreat (Knopf and Wunder 2006). We believe that observation by birders does not represent a threat to the mountain plover because it is limited in extent and most birders attempt to minimize disturbance to birds as they pursue their activities.

Most research conducted on mountain plover relies on passive sampling (*e.g.,* point counts) rather than active handling. Passive sampling is not likely to substantially affect the mountain plover. The studies that involve handling of adults, chicks, and eggs may impact individuals, but these studies are small enough in scale that they are not likely to affect populations as a whole. Knopf and Wunder (2006) cautioned mountain plover eggs could become overheated if exposed to direct sun on hot days. However, we do not have any information to indicate that this has caused decreased nest success in areas where research occurs.

Summary of Factor B

We do not have any evidence of risks to mountain plover from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe that that this factor will become a threat to the species in the foreseeable future. We conclude that the best scientific and commercial information available indicates that the mountain plover is not now, nor in the foreseeable future, threatened by overutilization for commercial, recreational, scientific, or educational purposes.

Factor C. Disease or Predation

Disease

We are not aware of any diseases or parasites that pose a threat to the mountain plover at this time. West Nile virus, which has been documented to cause deaths in many bird species, has not been found in mountain plover (Andres and Stone 2009, p. 29). Since 2007, 4,888 dead birds have been identified throughout California as deaths attributed to the West Nile virus (California Department of Public Health (CDPH) 2010). Within this time span, West Nile virus has been reported from a number of Central Valley counties, but to date no mountain plover deaths have been attributed to the virus (CDPH 2010). Over the same time period, there have been no bird deaths associated with West Nile virus in Imperial County.

Dreitz *et al.* (2010) investigated causes of mortality in mountain plover chicks and reported preliminary analysis of blood samples from chicks in Colorado and Montana. Blood parasitism was low in Colorado, and none was detected in Montana.

The Intergovernmental Panel on Climate Change (IPCC) (2007, p. 51) suggests that the distribution of some disease vectors may change as a result of climate change. However, we have no information to suggest any specific disease may become problematic to the mountain plover as a result of climate change.

Predation

The list of predators on mountain plover, their nests, and young is extensive, and includes the American badger (*Taxidea taxus*), skunks (*Spilogale* spp. and *Mephitis* spp.), ground squirrels, swift fox (*Vulpes velox*), coyote (*Canis latrans*), bullsnake (*Pituophis catenifer*), Swainson's hawk (*Buteo swainsoni*), prairie falcon (*Falco mexicanus*), common raven (*Corvus corax*), great-horned owl (*Bubo virginianus*), burrowing owl (*Athene cunicularia*), and loggerhead shrike (*Lanius ludovicianus*) (Smith and Keinath 2004, p. 20; Andres and Stone 2009, p. 28).

Survival rates of adult mountain plover are thought to be quite high on

both breeding and wintering grounds, and it is unlikely that predation of adult mountain plover constitutes a significant concern to mountain plover populations overall (Smith and Keinath 2006, p. 19). Emphasis has been largely placed on predation of nests and chicks (Kopf and Wunder 2006; Andres and Stone 2009, p. 28; Dreitz *et al.* 2010, entire). Survival of nests to hatching is similar to or greater than that found in other ground-nesting prairie shorebirds in the Great Plains, and nest success does not appear to be a limiting factor to population growth of the species (Dinsmore *et al.* 2010). Survival of chicks from hatching to fledging has been highlighted as a potentially important life stage that could be targeted for management to support the conservation and expansion of mountain plover populations, for example, from habitat improvements that may reduce predation rate (Dinsmore *et al.* 2010).

Knopf (2008, p. 50) cited the swift fox as the major predator on eggs and the primary predator on chicks on the PNG in Colorado, and suggested that reduced predator control and subsequent increase in predators was a contributing factor in the dramatic decline in mountain plover the area experienced. Thirteen-lined ground squirrels (*Spermophilus tridecemlineatus*) have been the greatest source of nest predation in South Park, Colorado (Wunder 2010b, pers. comm.). Chick monitoring in Colorado in 2010 confirmed 38 mortalities, including 13 from avian predation (most on less than 16-day old chicks by burrowing owls) and 8 by mammalian predators including swift fox and American badger (Dreitz *et al.* 2010, pp. 3–4). Predation by unknown species was suspected in some other deaths (Dreitz *et al.* 2010, pp. 3–4). Similar research in Montana in 2010 implicated black-billed magpies (*Pica hudsonia*) as a possible cause of disappearances of chicks whose fate was not confirmed.

Knopf and Wunder (2006) suggested mountain plover nest visits by researchers could lead to predation by ravens (*Corvus* spp.). Similarly, nest marking to avoid nest destruction during agricultural operations may alert predators to nest locations.

We do not believe that natural levels of predation present a threat to the mountain plover, although the risk could be increased through human development and habitat fragmentation. This may result where predators concentrate their foraging activities and movements along habitat edges. However, Mettenbrink *et al.* (2006, p. 195) looked at mountain plover nesting in a prairie landscape fragmented by crop fields and found little relationship between nest predation and distance to habitat edges. The authors concluded that predators of mountain plover in the shortgrass prairie apparently do not hunt selectively along anthropogenic (human-created) edges. Roads may serve as travel routes for predators (Pitman *et al.* 2005, p. 1267), and natural gas development has been shown to increase the occupancy of the common raven, a potential predator of mountain plover nests and chicks, in sage brush habitat (Bui *et al.* 2010, pp. 73–74). Increases in roads and structures associated with energy development could result in increased predation on mountain plover nests or chicks. However, Carr (in review) found no relationship between mountain plover nest success and road or well density.

While predation accounts for a major portion of chick mortality, we have no information that would lead us to conclude that predation on mountain plover chicks differs from levels experienced by other upland nesting shorebirds or that, across the range of the mountain plover, it is a current or future threat to the survival of the species.

Summary of Factor C

We do not find evidence that disease is currently impacting the mountain plover, nor do we have information to indicate that disease outbreaks will increase in the future. While the level of predation on mountain plover nests and chicks is high, it is not inconsistent with that found in other ground-nesting bird species. Fragmentation of habitats, including that associated with energy development, could increase predation, but evidence to date does not suggest any increase is occurring. We do not have information at this time to indicate that predation is impacting the mountain plover at a level that threatens the species. We conclude that the best scientific and commercial information available indicates that the mountain plover is not now, or in the foreseeable future, threatened by disease or predation to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the mountain plover discussed in *Factors A, B, C and E.* The Service considers regulatory mechanisms to mean all mechanisms that are related to a comprehensive regime designed to maintain a conserved wildlife population. In addition to the five factors that section 4(a)(1) of the Act directs the Service to consider, section 4(b)(1)(A) of the Act requires the Service to take into account, "those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. * * *" We consider these efforts when developing our threat analyses under all five factors and in particular under *Factor D.* Therefore, under *Factor D* we consider not only laws and regulations, but other mechanisms that are part of a regulatory process such as management plans and agreements, conservation practices, and so forth.

In analyzing whether the existing regulatory mechanisms are inadequate, the Service reviews relevant Federal, State, and Tribal laws, plans, regulations, Memoranda of Understandings (MOUs), Cooperative Agreements, and other such mechanisms that influence conservation. We give strongest weight to statutes and their implementing regulations, and management direction that stems from those laws and regulations. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are non-discretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute. Some other agreements (MOUs and others) are more voluntary in nature; in those cases we analyze the specific facts for that mechanism to determine the extent to which it can be relied on in the future. We consider all pertinent information, including the efforts and conservation practices of State governments, whether or not these are enforceable by law. Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted.

Conversely, threats on the landscape are not ameliorated when not addressed by existing applicable regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced). We cannot predict when or how State and Federal laws, regulations, and policies will change; however, most Federal land use plans are valid for at least 20 years. In this section, we review actions undertaken by State and Federal

entities designed to reduce or remove threats to mountain plover and its habitat.

Federal Laws and Regulations

The mountain plover is covered under the provisions of the Migratory Bird Treaty Act (MBTA), which provides regulatory protection for mountain plover by prohibiting actions causing direct mortality and destruction of nests. In addition, the mountain plover is listed as a Bird of Conservation Concern by the Service in all 12 Bird Conservation Regions encompassing the species' breeding and wintering ranges. Birds of Conservation Concern represent the highest conservation priorities under the MBTA for the Service's Migratory Bird Program (Service 2008, p. iii). The goals of the Service's Migratory Bird Program include the protection, restoration, and management of migratory bird populations to ensure long-term ecological sustainability (Service 2011). The Service's goal is to prevent or remove the need for additional bird listings under the Act by implementing proactive management and conservation actions. The list is to be used to develop research, monitoring, and conservation actions to stimulate coordinated and collaborative proactive conservation actions among Federal, State, Tribal, and private partners (Service 2008, p. iii). However, the designation as a Bird of Conservation Concern does not in and of itself provide any extra protections for the mountain plover or its habitat.

The BLM and the USFS are the primary Federal agencies that manage lands that provide breeding or wintering habitat for the mountain plover. The BLM's lands and USFS-managed National Grasslands provide important breeding habitat in Montana, Wyoming, Colorado, and New Mexico. The BLM's lands in California and southern Arizona may provide habitat for wintering mountain plover.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA (43 U.S.C. 1701(a)(8)) specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3–1 (Drilling applications and plans) and 43 CFR 3162.5–1 (Environmental obligations); subpart 4120 (Grazing Management) of Title 43 of the Code of Federal Regulations (CFR); and subpart 4180 (Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration) of Title 43 of the CFR.

Mountain plover have been designated as a BLM Sensitive Species in Colorado (BLM 2000a), California (BLM 2006), and Wyoming (BLM 2010a). The management guidance afforded sensitive species under BLM Manual 6840—Special Status Species Management (BLM 2008, entire) states that "Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the [Act]" (BLM 2008, p. 05V). The BLM Manual 6840 further requires that Resource Management Plans (RMPs) should address sensitive species, and that implementation "should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary" (BLM 2008, p. 2A1). See our discussion above under *Factor A,* Energy and Mineral Development, for more on measures the BLM has taken in Wyoming to conserve the mountain plover as a sensitive species.

The BLM in Montana has designated a Mountain Plover Area of Critical Environmental Concern (ACEC), which contains 24,730 ac (9,892 ha) of habitat suitable for breeding mountain plover (BLM 2000b, p.1). Management prescriptions apply within the ACEC to protect breeding mountain plover during its nesting period. All construction activity and surface disturbance are prohibited from April 1 to July 31, road construction is minimized within the ACEC, and seasonal restrictions also apply to off-highway travel (BLM 2000b, pp. 8–9). While the ACEC is a focus of BLM's efforts to conserve the mountain plover, the area covers only a small fraction of all mountain plover habitat in Montana.

As a designated sensitive species under BLM Manual 6840, mountain plover conservation must be addressed in the development and implementation of RMPs on BLM lands. RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses, resource condition goals and objectives to be attained, program constraints and general management practices needed to attain the goals and objectives, general implementation sequences, and intervals and standards for monitoring and evaluating the plan to determine effectiveness and the need for amendment or revision (43 CFR 1601.0–5(n)). The RMPs provide a framework and programmatic guidance for activity plans, which are site-specific plans written to implement decisions made in an RMP. Examples include Allotment Management Plans that address livestock grazing, oil and gas field development, travel management (motorized and mechanized road and trail use), and wildlife habitat management. Activity plan decisions normally require additional planning and National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis. If an RMP contains specific direction regarding mountain plover habitat, conservation, or management, it represents an enforceable regulatory mechanism to ensure that the species and its habitats are considered during permitting and other decision-making on BLM lands.

The BLM has regulatory authority for oil and gas leasing on Federal lands and on private lands with a severed Federal mineral estate, as provided at subpart 3100 (Onshore Oil and Gas Leasing; General) of Title 43 of the CFR, and they are authorized to require stipulations as a condition of issuing a lease. They can condition "Application for Permit to Drill" authorizations, conducted under a lease that does not contain specific mountain plover conservation stipulations, but utilization of conditions is discretionary, and we are uncertain as to how this authority is applied.

Management of National Forest System lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600–1614, August 17, 1974, as amended). The NFMA specifies that all National Forests must have a Land and Resource Management Plan (LRMP) (16 U.S.C. 1604) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. The NFMA requires USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1604(c)). The USFS conducts NEPA analyses on its LRMPs, which include provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The USFS planning process is similar to that of the BLM. The mountain plover is a USFS sensitive species in Region 2, which includes all of Colorado and portions of Wyoming and Nebraska.

The USFS policy provides direction to analyze potential impacts of proposed

management activities to sensitive species in a biological evaluation. The LRMPs for grassland units within USFS Region 2 (PNG, Nebraska National Forest, and Thunder Basin National Grassland in Wyoming) contain management direction for the mountain plover (USFS 2001). Some examples of the LRMP standards (required measures) for the three areas include: (1) Prohibiting development of new facilities within 0.25 mi (0.40 km) of known mountain plover nests or nesting areas; (2) limiting vehicle speeds in occupied mountain plover habitat to 25 miles per hour (mph) (40 kilometers per hour (kph)) on resource roads and 35 mph (56 kph) on local roads; (3) designing vegetation management projects in suitable mountain plover habitat to maintain or improve mountain plover habitat; and (4) maintaining occupied nesting and brooding habitat on black-tailed prairie dog colonies by limiting new oil and gas development to one well per 80 ac (32 ha) within occupied habitat. Cumulatively, structure and facility development will not occur on more than 2 percent of the occupied mountain plover nesting habitat in each prairie dog colony on the Thunder Basin National Grasslands (USFS 2001). As described above in the discussion under *Factor A,* the PNG has been conducting prescribed burning for many years to improve breeding habitat for mountain plover (Knopf 2008, pp. 25–26). Numerous research projects on mountain plover have also been conducted on the PNG and the adjacent USDA Research Area (Augustine 2010a, pers. comm.; Augustine 2010b, pers. comm.).

In Colorado and Wyoming, a multi-agency team, consisting of biologists from the Service, BLM, USFS, and National Park Service, developed a non-regulatory screening tool to allow for proactive and consistent management and conservation of the mountain plover on public lands and to provide a tool for streamlining agency review and implementation of activities (BLM 2004). The screening tool allows agency personnel to evaluate the impacts of projects (such as energy development, rangeland management, and recreation) that would occur within or adjacent to mountain plover habitat to determine whether the project would result in an impact to the species at the local or rangewide scale. Use of the screening tool would not stop any projects from occurring, but rather would alert agency personnel to possible project impacts so that the project could be modified if possible. While the screening tool provides a good non-regulatory mechanism for Federal biologists in Colorado and Wyoming to evaluate the effects of their proposed actions, it does not require that projects ultimately have no effect on mountain plover. However, this screening tool provides for advanced notice of actions and facilitates coordination between the multi-state agency team.

The Federal laws, regulations, and actions cited above are designed to reduce or remove threats to the mountain plover and its habitat. There is no information available to indicate that the species is threatened by the inadequacy of existing Federal laws and regulations.

State and International Laws and Regulations

The Nebraska Game and Parks Commission lists the mountain plover as "threatened." But, this regulatory mechanism likely protects relatively few individuals (see Conservation Status and Local Populations above). While some States, such as Colorado, have specific management plans that address mountain plover conservation, and all States within the range of the species include it within their State Wildlife Conservation Strategies (see Conservation Status and Local Populations above), there is no rangewide or intrastate coordinated management effort and no requirement to implement specific management actions. However, there is no information available to indicate that the species is threatened by the inadequacy of existing State regulatory mechanisms.

Canada

The mountain plover has been listed as endangered in Canada since 1987. Knapton *et al.* (2006, p. i) noted that listing was in part due to a perceived decline from 1980 to 1986. The Species At Risk Act (SARA), passed December 12, 2002, is a commitment by the Canadian government to prevent the extinction of wildlife and provide the necessary actions for the recovery of species deemed endangered. These at-risk wildlife species are provided with legal protection under SARA, and their biological diversity is thereby conserved (Environment Canada 2010). As noted in the Background section above, the mountain plover population in Canada is very small, and efforts there to improve habitat will not likely have a significant impact on this species' conservation rangewide. There is no information available to indicate that the species is threatened by the inadequacy of existing regulatory mechanisms in Canada.

Mexico

In 2001, Mexico established a list of species classified as endangered, threatened, under special protection, or probably extinct in the wild (Commission for Environmental Cooperation (CEC) 2011). The mountain plover was listed as threatened (Andres and Stone 2009, p. 14). Under the General Wildlife Law, the use of at-risk species may be authorized only for the collection and capture for restoration, repopulation, and reintroduction activities (CEC 2011). However, regulatory powers and wildlife management prerogatives reside largely with the Federal government with States taking a more minor role. Shifting Federal agency responsibility and lack of agency funding results in inadequate protection and management of wildlife resources (Valdez *et al.* 2006, p. 277). Although regulatory mechanisms in Mexico appear to be minimal or are not adequately enforced, Mexico constitutes a small portion of the overall species' breeding range. Mountain plover appear to winter in significant numbers in Mexico, but at that time of year, they are highly mobile and less vulnerable to human activity than when nesting, and they therefore may require few regulatory protections. There is no information available to indicate that the species is threatened by the inadequacy of existing regulatory mechanisms in Mexico.

Summary

While mountain plover conservation has been addressed in some State, Federal, and international plans, laws, regulations, and policies, none of these have applicability throughout the range of the mountain plover sufficient to provide effective population-level conservation. However, we have found in the analysis of the other four factors (A, B, C, and E) that there are no activities that currently rise to the level of a significant threat to the mountain plover. Therefore, we conclude that the best scientific and commercial information available indicates that the mountain plover is not now, and is not expected to become within the foreseeable future, threatened by the inadequacy of existing regulatory mechanisms to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Genetic Diversity

The loss of local populations may impact a species because local populations may possess unique genetic characteristics that are important to the species' genetic diversity and its ability to adapt to future environmental changes. However, for mountain plover, genetic studies using nuclear microsatellites have concluded that mountain plover across sampled breeding locations in Colorado and Montana comprise a single, relatively homogenous gene pool (Oyler-McCance 2005, p. 359; Oyler-McCance *et al.* 2008, pp. 496–497). These results suggest that there is sufficient gene flow among breeding areas to offset reported adult fidelity to breeding areas and genetic effects of small populations (genetic drift, loss of genetic diversity) (Oyler-McCance *et al.* 2005, p. 360; Oyler-McCance *et al.* 2008, pp. 496–497). While this seems unusual for a species with relatively high reported site fidelity, it suggests pair formation in mixed winter flocks from different breeding areas. Widespread mixing of mountain plover populations in winter has been documented (Wunder 2007, p. 118). From a genetic perspective, this information suggests that no single breeding population requires special conservation or protection (Oyler-McCance *et al.* 2005, p. 360). However, not all populations have received genetic analysis, including potentially non-migratory breeding populations in Mexico. We conclude that there is no known restriction of gene flow within the species, and that the loss of any given local population will not substantially impact the genetic diversity of the mountain plover or the species' ability to adapt to future stressors.

Longevity, Site Fidelity, and Sex Ratio

In our December 5, 2002, proposed listing rule (67 FR 72396), we stated, "* * * that because the average lifespan of a mountain plover is less than 2 years, and breeding does not occur until 1 year of age, an individual mountain plover will likely have only one breeding season to contribute to population recruitment." Previous study results underestimated adult survival and, more importantly, our proposed rule erroneously concluded that average lifespan reflected typical adult survival. In the best available estimate of adult mountain plover survival, the annual survival rate of adult mountain plover of both sexes in Phillips County, Montana, ranged from 0.74 to 0.96 yearly (Dinsmore 2008, p. 50). Based on this study, a mountain plover returning to its breeding ground would likely return multiple additional years. Dinsmore *et al.* (2010) characterized the mountain plover as typical of relatively long-lived bird species, documented to live over 10 years, where repeated reproductive attempts throughout life are less important to population growth than adult survival. On the basis of our review of the best available information, we now believe that a short average lifespan and resulting limited reproductive opportunities, as suggested in our 2002 proposal, do not constitute a threat to the mountain plover.

In our February 16, 1999 (64 FR 7587), and December 5, 2002 (67 FR 72396), proposals to list the mountain plover as a threatened species, we considered the plover to have high fidelity to breeding sites. In patchy habitat, when nesting habitat is destroyed or unavailable, it may be difficult for the mountain plover to find a new place to breed, thus resulting in the decline of populations. Dispersal ability may be important to the use of available habitat and conservation of the mountain plover given the patchiness of desirable breeding habitat. Altered or fragmented landscapes may force mountain plover to disperse greater distances. For example, in Montana, where the mountain plover is highly dependent on black-tailed prairie dog colonies for breeding habitat, sylvatic plague outbreaks often make previously used breeding habitat undesirable. As discussed above, Skrade and Dinsmore (2010, pp. 671–672) demonstrated the mountain plover's ability to disperse at least locally to exploit favorable breeding habitats nearby, and in at least one instance, an adult mountain plover returned to breed at a site about 25 mi (40 km) from a site where it was banded during the previous season. We conclude that while the mountain plover generally exhibits fidelity to breeding sites, it is capable, at least locally, of seeking out and exploiting new habitat through both juvenile dispersal and through adult birds returning to different breeding sites in subsequent years. On a local scale (several mi/km), loss or fragmentation of breeding habitat is unlikely to have an inordinate effect on mountain plover survival and reproduction (*i.e.,* effects are likely to be proportional to, but not in excess of the amount of habitat loss).

Previously, concern arose as to whether a preponderance of male mountain plover among those birds handled by researchers in California suggested a skewed sex ratio (more males than females) range wide and whether this might adversely affect reproductive potential. Knopf (2003, pers. comm.) speculated that a slightly unbalanced sex ratio in California might result from slightly higher overall mortality in females or from differential wintering, with females wintering further south, in Mexico. Rangewide sex ratios for mountain plover are still unknown (Knopf and Wunder 2006) and we have no evidence that relative number of males and females in mountain plover populations represents a threat to the species.

Exposure to Pesticides

Potential exposure of mountain plover to pesticides and agrochemicals on wintering areas in California, and resulting impacts to mountain plover health and reproduction, have been cited as a potential threat (Knopf and Wunder 2006). Exposure of mountain plover to direct pesticide application is likely minimized because most pesticide application occurs on growing crops, and less frequently on harvested and fallow fields, or grazed pastures that mountain plover frequent.

The organochlorine agricultural pesticide DDT, and its byproduct DDE, can cause thinning of eggshells and decreased reproductive success in birds (Longcore *et al.* 1971, pp. 486, 489). DDT has not been in use in California since the 1970s, and in many cases, DDE levels that remain in the environment will decrease slowly over several decades (Thomas *et al.* 2008, pp. 55, 65). Organochloride levels in mountain plover collected from three California counties (Imperial, San Luis Obispo, and Tulare) in 1991–1992 ranged from 1.0 to 10.0 parts per million (ppm) (dry weight); although these levels are considered high for an upland bird, no subsequent issues with bird behavior or eggshell thickness in mountain plover were noted (Knopf and Wunder 2006). Levels of DDE of 43 ppm (wet weight) were found in eggs collected from abandoned mountain plover nests in Park County, Colorado, in 2001 (Knopf and Wunder 2006). No effects on eggs, chicks, or adult mountain plover were established.

Historically, soils in the Imperial Valley are known to be high in DDE (California Department of Food and Agriculture (CDFA) 1985, p. 27). Studies have shown unchanging levels of the chemical in the past decades; this suggests a persistent, local source of the chemical (Gervais and Catlin 2004, pp. 509–510). The Imperial Valley is the suspected source for high DDE concentrations and decreased reproductive success in white-faced

ibises (*Plegadis chihi*) (Yates *et al.* 2010, p. 159). Levels of DDE in resident burrowing owls are suspected to act as a stressor, but reproductive effects have not been documented (Gervais and Anthony 2003, p. 1259).

Service biologists recently collected and analyzed mountain plover eggs, soils, and soil invertebrates from breeding areas in Colorado, Wyoming, and Montana, and soils and soil invertebrates from wintering areas in the Imperial Valley (Zeeman 2011, pers. comm.). Chemical analyses of eggs showed measurable, and in some cases high, levels of persistent organic pollutants, most notably DDE. Much lower concentrations of polychlorinated biphenyls (PPBs), hexachlorobenzene, tetrachlorobenzenes, alpha chlordane, oxychlordane (chlordane metabolite), heptachlor epoxide, and dieldrin were found. Contaminants detected in mountain plover eggs were also detected in soil and invertebrate samples from fields in Imperial Valley, but no measurable levels were found in soil and invertebrates at the breeding grounds.

The upper concentrations of DDE detected, 50 ppm (wet weight) in two eggs, was within the range of values (which can range from as low as 3 ppm in sensitive species to 30 ppm in less sensitive species) associated with eggshell thinning and reproductive impairments in wild birds (Blus 1996). Conspicuous signs of impacts associated with DDE exposure, such as eggshell cracking and embryo malformation, were not detected in mountain plover (Zeeman 2011, pers. comm.). Based on concentrations found in eggs, DDE from wintering areas, including the Imperial Valley, could potentially affect mountain plover (Zeeman 2011, pers. comm.). The potential for the other contaminants detected in eggs, both individually or in combination, to affect the mountain plover is being evaluated by the Service (Zeeman 2011, pers. comm.). The results cited above suggest that exposure varies by individual and that few mountain plover have DDE levels that raise a concern. In addition, no effects of DDE to adult mountain plover, their eggs, or chicks have been established. At this time, we believe that if an effect occurs, it would probably be localized, and would affect individual birds or eggs and not have an effect at a population or species level.

Certain organophosphate insecticides are still used to control insect pests on crops in California's Central Valley within the range of the mountain plover. Iko *et al.* (2003, p. 119) measured cholinesterase levels in mountain plover, a measure of exposure to organophosphorus and carbamate insecticides, and found that they varied widely between mountain plover collected in California from the Central Valley where pesticide use is widespread and from the Carrizo Plain where there is minimal pesticide use, but no differences were observed in mountain plover body condition.

The Central Valley is one of the State's primary growing regions for alfalfa. Sixty percent of the State's hay crop is grown here, with over 600,000 ac (240,000 ha) planted to alfalfa within the Central Valley (Godfrey 2002, p. 4). Insecticides used on alfalfa pests include chlorpyrifos, malathion, and pyrethroids. Insecticide applications in alfalfa usually occur once insects reach damaging levels, typically in March or later in the growing season (Godfrey 2002, pp. 4–10), suggesting that exposure of wintering mountain plover to treatments would be limited, if any. Because early spring insecticide treatments in alfalfa have been found to largely eliminate nontarget insect species complexes (Godfrey 2002, pp. 4–6), an unknown but potential residual effect to mountain plover prey availability may exist in specific areas the following winter. If present, such an effect could locally reduce desirability of certain alfalfa fields to wintering mountain plover, but would not have a rangewide impact to the species.

Malathion, a broad-spectrum organophosphate insecticide, has been used to control the beet leaf-hopper (*Circulifer tenellus*) in rangeland habitat, fallow fields, oil fields, and cultivated areas on both public and private lands in the San Joaquin Valley (BLM 2002, pp. 1–2; CDFA 2007, p. 8; CDFA 2008, pp. 1–4). The beet leaf-hopper is a vector for curly top virus, which negatively affects crops. In the western and southern portions of the San Joaquin Valley, aerial spraying may occur fall through spring, and may include treatment of approximately 200,000 ac (80,000 ha) in years with high beet leaf-hopper populations. Treatment usually results in a target population decline of over 90 percent (CDFA 2008, pp. 1–4). Potential impacts to the mountain plover from the control treatments could result from both direct exposure and indirectly from the reduction of insect prey (CDFA 2007, p. 79).

Although beet leaf-hopper control is potentially immense in scale, in the 10 years up to 2002, an average of only about 4,400 ac (1,800 ha) per year were treated in the bird's wintering range within the San Joaquin Valley, primarily in sloped terrain that is not thought to be desired by the mountain plover (CDFA 2007, p. 79). The limited area and quality of mountain plover habitat treated, coupled with the species' large wintering range in California, led the CDFA to determine that the curly top treatment program would not be likely to significantly impact the mountain plover (CDFA 2007, p. 80). On public lands managed by the BLM, prescribed usage avoids malathion spraying on wintering mountain plover areas when the plover is present (BLM 2002, p. 1).

Chemical exposure in Mexico where regulations and enforcement may be less stringent could be of concern (Andres and Stone 2009, p. 30). DDE levels in mountain plover eggs reported by Zeeman (2011, pers. comm.) may have resulted from exposure in Mexico, where DDT is still used. While we believe that crop fields in Mexico have potential to support large numbers of wintering mountain plover, significant mountain plover use of crop fields in Mexico has not been reported (Macias-Duarte and Punjabi 2010, pp. 3, 7), nor have specific issues regarding pesticide use and impact to mountain plover been identified. While changing agricultural practices regarding pesticide application or evolution of new chemicals for use in the United States or Mexico could prove a future threat, we have no basis for predicting the potential of such an occurrence.

We have no evidence that pesticides are significantly impacting mountain plover populations either locally or rangewide. However, given the information summarized above, additional evaluation of any possible effects to mountain plover from former and ongoing pesticide use within the mountain plover's range appears prudent.

Selenium Toxicity

Within the western San Joaquin Valley, selenium is present in the soil and has the potential to occur in ponded irrigation water in fields and drainages. Irrigation with drainwater used to flood wetlands has resulted in biological accumulation of selenium sufficient to harm reproduction of shorebirds and other wildlife (Ohlendorf *et al.* 1987, pp. 169–171, 174–181). Potential effects of selenium poisoning on birds can include gross embryo deformities, winter stress syndrome, depressed resistance to disease due to depressed immune system function, reduced reproductive success, reduced juvenile growth and survival rates, mass wasting, loss of feathers (alopecia), embryo death, altered enzyme function, and mortality (Ohlendorf 1996, pp. 131–139; O'Toole and Raisbeck 1998, pp. 361–380). Species exposed to multiple

stressors can become more vulnerable to exposure to selenium.

Because the mountain plover is an upland bird feeding primarily on terrestrial insects, its habits may limit its exposure to selenium. Still, selenium bioaccumulation in the food chain could create a contaminant hazard for mountain plover feeding on insects in alkaline flats, grazed pastures, and plowed fields in this area. Specific exposure of the mountain plover to selenium, or any adverse effects of such exposure have not been documented.

In summary, it has been documented that mountain plover have been exposed to various levels of potentially harmful pesticides and chemical toxins in various portions of its range. However, we have no information to indicate that the mountain plover is responding negatively to this exposure or that it is likely to respond negatively in the future. Exposure levels that elicit negative responses in other bird species do not appear to elicit a similar negative response in mountain plover. Therefore, we do not believe that mountain plover are threatened by exposure to pesticides and chemical toxins.

Grasshopper and Cricket Control

Efforts to control grasshoppers and Mormon crickets, especially Federal control programs on BLM lands, have been cited as potentially detrimental to breeding mountain plover. Grasshoppers occur throughout the breeding range of the mountain plover and can reach population levels considered to be a threat to agriculture. The USDA's Animal and Plant Health Inspection Service (APHIS) conducts rangeland grasshopper and Mormon cricket control, including areas occupied by breeding mountain plover. Logically, a significant reduction in these mountain plover foods could affect mountain plover fecundity and survival. However, efforts to control grasshoppers and Mormon crickets on Federal lands are generally limited to suppressing populations in years and areas where infestations occur, and do not have the goal of eradication, but rather the goal of reducing densities to levels that limit economic impacts (BLM 2010b). Numbers of these insects present after treatment may remain greater than those present in a normal year. The BLM currently is pursuing a strategy of "reduced area and agent treatments," with the majority of treatments through aerial spraying of a pesticide (diflubenzuron, a chiton inhibitor) with limited impacts to non-target species (BLM 2010b). Broad spectrum insecticides (carbaryl and in limited cases malathion) are used more sparingly, and as a secondary treatment.

Control on private lands can be undertaken by State or local government agencies, or private landowners without participation or oversight by APHIS. Treatment on private lands likely varies depending on resources available and the economic implications of infestations. Where treatment occurs, it likely has the similar goal of reducing insect densities to acceptable levels. Grasshopper and cricket control can have an impact on mountain plover prey and could, in some years and at some locations, adversely affect mountain plover breeding. However, since the scope and impact of these control efforts appear minimal relative to the mountain plover breeding range, we conclude that grasshopper and Morman cricket control does not represent a significant threat to rangewide mountain plover populations.

Weather

Annual weather variation influences mountain plover habitat and breeding success. Inclement weather may hinder egg laying (Knopf and Wunder 2006). Cold, rain, and hail can result in loss of nests and decreased chick survival. Dreitz *et al.* (2010, pp. 3–4) identified weather as a significant cause of chick mortality. Mammalian predators of mountain plover eggs and chicks are scent-driven, and wet conditions enhance predation (Knopf and Wunder 2006; Wunder 2007, p. 121).

Wunder (2007, pp. 119–121) presented evidence that recruitment may be linked to regional patterns of weather, with highest recruitment coming from breeding areas with low precipitation and a subsequent 1- to 2-year lag observed in increased populations of adults (Wunder 2007, pp. 119–121). Productivity may be influenced by drought cycles, with dry years reducing predation from mammals and suppressing vegetative growth, thus providing increased accessibility to insects. Annual survival of mountain plover in Montana proved higher during periods of drought, although prolonged drought eventually decreases abundance of insect foods (Dinsmore 2008, p. 52). Weather variation affects mountain plover productivity across its breeding range, but we have no evidence that normal weather fluctuations represent a threat to the mountain plover.

Climate Change

There is no information available on the direct relationship between the environmental changes associated with climate change and mountain plover population trends. However, climate change could potentially impact the species. According to the IPCC (2007, p. 6), "warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 30). It is very likely that over the past 50 years cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 6). It is likely that heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 30).

Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century (IPCC 2007, p. 19). For the next 2 decades, a warming of about 0.2 degrees Celsius (°C) (0.4 degrees Fahrenheit (°F)) per decade is projected (IPCC 2007, p. 19). Afterward, temperature projections increasingly depend on specific emission scenarios (IPCC 2007, p. 19). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6 to 4.0 °C (1.1 to 7.2 °F), with the greatest warming expected over land and at most high northern latitudes (IPCC 2007, p. 46).

The IPCC (2007, p. 48) predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change associated disturbances (*e.g.,* flooding, drought, wildfire, and insects), and other global drivers. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate intense precipitation events, warmer air temperatures, and increased summer continental winds (Field *et al.* 1999, pp. 5–10; Cayan *et al.* 2005, pp. 6–28). With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 1.5 to 2.5 °C (3 to 5 °F).

The mountain plover is primarily a species of grasslands and semi-desert. Grasslands in the Great Plains of the United States and southern Canada are predicted to get warmer and drier with climate change (North American Bird

Conservation Initiative 2010, p.18). Southwestern grasslands are expected to become drier because of declining precipitation and higher temperatures, especially the Chihuahuan Desert grasslands of the southwestern United States and northern Mexico, which are critical wintering areas for many grassland birds, including the mountain plover (North American Bird Conservation Initiative 2010, p.18). In northern grasslands, additional precipitation is expected, but they will still become drier because warmer temperatures will cause increased evaporation (North American Bird Conservation Initiative 2010, p. 18). Variability in precipitation is also expected to increase; droughts, flooding, and extreme storms (such as hailstorms) are all expected to become more common (North American Bird Conservation Initiative 2010, p.18). Increased atmospheric carbon dioxide will probably contribute to invasions of woody shrubs into grasslands (North American Bird Conservation Initiative 2010, p. 18), which could make certain habitats unusable for the mountain plover.

Climate Wizard (TNC 2007) predicts an average temperature increase of approximately 4 to 6 °F by the 2050s for the majority of mountain plover breeding and wintering habitat within the United States. Precipitation is projected to decline slightly in the southwest portion of the range, and to increase by 10 to 15 percent in the more northern portions of the range in the same time period. However, as stated above, warmer temperatures and evaporation may offset any gains in precipitation. By the 2080s, temperatures are predicted to increase by as much as 7.5 °F within the species' breeding range, and precipitation to decline from 2050s levels throughout the range (TNC 2007). Weather data in the Imperial Valley recorded by the Desert Research Institute of the Western Regional Climate Center (WRCC) between 1927 and 2010 show an increasing trend in average temperature during the months of September through March, when mountain plover are present in the area (WRCC 2010a, Figure 1). Projected temperature change for the Imperial Valley was obtained through the Climate Wizard, in which an average of all models was used to display change in temperature. These data indicate a 3.9 °F increase in temperature for the 2050s and a 5.7 °F increase for the 2080s (TNC 2007). The WRCC also documented in Imperial, California, a slight increasing trend in average precipitation (inches) from 1925–2010 (WRCC 2010b). Projected change in precipitation values for the Imperial Valley was also obtained through the Climate Wizard in which an average of all models was used to display percent change in precipitation. These data indicate a 1.1 percent increase in precipitation for the 2050s and an increase of 0.3 percent by the 2080s (TNC 2007).

Change in plant phenology (timing of life cycle events such as vegetative growth and reproduction) may be one of the earliest observed responses to rapid global climate change and could potentially have serious consequences both for plants and animals that depend on periodically available resources (Moza and Batnegar 2005, p. 243). A change in the timing of availability of insects that mountain plover and their chicks rely on as a food source could occur as a result in changes in plant phenology.

Because they are often highly competitive, invasive plant species are altering the plant composition of ecosystems and changing their structure and function over large landscape areas. Addition of fine fuels from these species often increases fire frequency, which can lead to increased dominance by invasive species and further habitat degradation. Climate change is exacerbating these changes by altering the amount and seasonal distribution of precipitation and seasonal temperature patterns in ways that often favor the invasive species (Tausch 2008). This could potentially result in changes in the amount of ground cover in mountain plover habitat, which could discourage mountain plover nesting. Nonnative wildlife species that could compete with the mountain plover for resources or prey on the species could potentially move into their habitats.

Although the mountain plover was not included in "The State of the Birds—2010 Report on Climate Change" (North American Bird Conservation Initiative), it was assessed using the sensitivity traits analysis used in that report (Sauer 2010b, pers. comm.). The threat of climate change impacts to the plover was considered low, as it was only considered sensitive to one of the five main traits (it was considered a breeding obligate to a single habitat type) (Sauer 2010b, pers. comm.). Species that occupy only a single habitat for breeding are vulnerable should climate change reduce or eliminate that habitat. While the mountain plover has been often described as a grassland obligate (*i.e.,* is dependent on grasslands for breeding), it also breeds in agricultural fields, and in semi-desert habitat. As such, we believe it is less likely to be threatened by climate change impacting grassland, or any one of its favored breeding habitats, than is suggested by its classification as a breeding obligate to a single habitat type. The mountain plover was not considered sensitive to potential climate change impacts based on the other four traits (its migratory habits, dispersal ability, niche specificity, and reproductive potential) (Sauer 2010b, pers. comm.). In general, the mountain plover seems to possess characteristics that would allow it to adapt to changing environmental and climate conditions. See the North American Bird Conservation Initiative (2010, p. 28) for definitions of these traits.

Specific information on mountain plover suggests that the species might be adapted to drought, and that climate change predictions of the Great Plains becoming warmer and drier might benefit the species (Dinsmore 2008, p. 52). Andres and Stone (2009, p. 31) predicted increased summer temperatures and decreased precipitation could benefit mountain plover breeding. Recruitment of juvenile mountain plover into the population appears linked to regional patterns of precipitation, with highest recruitment coming from areas with lowest precipitation every year, and a subsequent increase in populations of adults observed from the same areas after a 1- to 2-year lag (Wunder 2007, pp. 119–121). Annual survival of mountain plover in Montana proved higher during periods of drought, despite potential reduction in insect foods (Dinsmore 2008, p. 52). Peterson (2003, pp. 291–292) concluded that there have been subtle shifts northward in ranges of grassland birds, including mountain plover, potentially due to climate change.

Climate change predictions are based on models with assumptions, and there are uncertainties regarding the magnitude of associated climate change parameters, such as the amount and timing of precipitation and seasonal temperature changes. There is also uncertainty as to the magnitude of effects of predicted climate parameters. The mountain plover, along with its habitat, will likely be affected in some manner by climate change. A shift in the species' geographic range may occur due to an increase in temperature and drought, although climate change would likely not pose as great a risk to mountain plover habitat as it may to species in polar, coastal, or montane ecosystems. Nonnative and invasive species, both plants and animals, could move into plover habitat as a result of

changes in temperature or precipitation patterns and degrade nesting habitat or compete with the mountain plover for resources. A change in the timing of availability of insects that mountain plover and their chicks rely on as a food source could occur as a result of changes in plant phenology. There is no information available to suggest that any of these factors are impacting mountain plover now or that they will likely impact the species in the foreseeable future.

Based on all the potential climate change factors, a shift in range of the species could be possible, but there is no information available to suggest that a net loss in occupied breeding habitat or a significant impact to the status of the species will result. Although currently difficult to quantify, changes in climate, including higher temperatures, increasing stochastic precipitation events, high winds, and increasing soil dryness, will likely lead to a loss of agricultural production in the Imperial Valley; however, wintering habitat seems adequate to support the species. The species is adaptable to a wide array of climes, as evidenced by a geographic range that includes 12 States, Canada, and Mexico. Based on the best available information on climate change projections modeled over the next 40 to 70 years, we do not consider climate change to be a significant threat to the mountain plover at this time.

Human Disturbance

Knopf and Wunder (2006) stated that mountain plover on nests are extremely tolerant of human disturbance from vehicles, tractors, and aircraft, but quickly moved away when approached by a human on foot. While adult mountain plover would not likely be affected by humans on foot, eggs left unprotected for a period of time could become overheated if exposed to direct sun on hot days.

It seems likely that heavy construction activities nearby could impact nesting mountain plover. Such activities are limited in scope across mountain plover breeding habitat at any one time. In addition, timing stipulations that restrict construction related to oil and gas development, wind-power development, and some other activities in the vicinity of mountain plover during the nesting season exist for some Federal lands (Knopf and Wunder 2006).

Mountain plover are only one of a number of breeding bird species found in the habitats and locations where they nest. While prohibitions under the MBTA govern direct mortality and the destruction of mountain plover nests, general awareness of MBTA protections and of efforts to protect nesting birds, their nests, and their eggs may help limit human disturbance to nesting mountain plover.

Andres and Stone (2009, p. 27) suggested population-level effects from human disturbance were unlikely. We conclude that while human-caused disturbance may impact mountain plover, such impacts are generally of limited scope, and human disturbance is not likely a significant threat to the species.

Cumulative Impacts

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact the mountain plover beyond the scope of each individual threat. For example, as discussed under *Factor C,* habitat fragmentation, including energy development that both alters habitat and provides structure on which predators could perch, could lead to increase in predation on the mountain plover. We have no data to determine if, or to what extent, such a scenario is likely to occur. We conclude, at this time, that it does not present a threat to the future existence of the mountain plover.

Similarly, under *Factor A,* we alluded to the potential that in the Imperial Valley and other areas of California, human development, solar development, changing agricultural practices, water availability, and climate change could interact to heighten potential loss of mountain plover wintering habitat. In the future, warming climate may necessitate use of more irrigation water for crops at the same time that water availability decreases due to expansion of human population and related water demand. In our best judgment, agriculture in the Imperial Valley, and in other areas of California that support the mountain plover, are likely to be affected by some variation of the above scenario. However, specific changes in agriculture are uncertain. Seasonal change in timing of crops, potential change toward those crops needing less water, and changes in irrigation practices may or may not detract from available wintering habitat for mountain plover. While cumulatively, these factors will likely reduce the total area of wintering habitat available, we believe that sufficient area of appropriate agricultural habitat will persist to support wintering mountain plover.

We have not identified other likely scenarios where the potential threats discussed in the five factors above have potential to work in concert to synergistically produce threats to the mountain plover above those which we have analyzed. We conclude that, at this time, there are no identifiable cumulative impacts likely to threaten the existence of the mountain plover in the foreseeable future.

Summary of Factor E

We conclude that the best scientific and commercial information available indicates that the mountain plover is not now, or likely in the future, threatened by genetic stochasticity, its typical lifespan, its site fidelity, exposure to pesticides, selenium toxicity, grasshopper and cricket control, weather, climate change, or human disturbance, or cumulative impacts of potential threats such that the species is in danger of extinction or likely to become so within the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether the mountain plover is endangered or threatened throughout all, or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the status and past and present and future threats faced by the mountain plover. We reviewed information in our files, other available published and unpublished information, and information provided by interested parties following our February 16, 1999, and December 5, 2002, proposals to list the mountain plover (64 FR 7587 and 67 FR 72396, respectively), and following our June 29, 2010, document (75 FR 37353) vacating our September 9, 2003, withdrawal (68 FR 53083) and reinstating our 2002 proposal. We also consulted with Federal and State land managers.

There have been historical impacts to the mountain plover, in particular the loss of much of the native prairie ecosystem, including bison, prairie dog colonies, other native grazers, and wildfires that produced extensive mountain plover habitat on the Great Plains. However, past concerns regarding continuing and future loss of breeding habitat provided by black-tailed prairie dog colonies appears unfounded. Conversion to agriculture remains insignificant across the mountain plover's breeding range. Human development and resultant impact to mountain plover breeding habitat in South Park, Colorado, has not occurred as previously anticipated, and is not expected to do so in the foreseeable future. Little evidence has

surfaced to suggest that the mountain plover's substantial use of cultivated lands for breeding is problematic. The potential for future energy development to adversely affect mountain plover and their habitat on their breeding or wintering ranges is not fully known and requires continued research. However, studies to date do not lead us to conclude that these activities currently pose substantial threats to the mountain plover or will in the foreseeable future. Climate change may impact the mountain plover, positively or negatively, in ways not yet envisioned.

In the past, we were concerned that mountain plover life span was short compared to other plovers and that this, in combination with high breeding site fidelity, presented a threat to breeding populations. Contrary to our previous belief, the mountain plover is now considered a relatively long-lived species. Site fidelity and ability to seek out alternative sites for breeding does not appear to be a concern. Based on new information regarding life span, site fidelity, and dispersal, we no longer believe that these aspects of the mountain plover's life history represent any threat to the species. Lastly, recent information confirms that some mountain plover are exposed to pesticides, but no evidence of impacts to individuals, local populations, or rangewide impacts to the species have been demonstrated.

The current status of the mountain plover does not suggest that future habitat changes, or the combination of climate change and habitat changes will result in significant population-level impacts in the foreseeable future. Their geographically widespread breeding and wintering locations, and ability to use a variety of habitats, contribute to their security. During breeding, they utilize short- and mixed-grass prairie, prairie dog colonies, agricultural lands, and semi-desert (Dinsmore 2003, pp. 14–17). The variety of habitats in which they successfully breed suggests that threats affecting one habitat type would not greatly increase the mountain plover's vulnerability to extinction. Mountain plover have proven to be adaptable to many human activities, such as using crop fields for breeding and wintering, and benefitting from some cattle grazing practices. Over time, the extent of wintering habitat in California is likely to decline, but wintering mountain plover exploit a variety of grassland, rangeland, crop fields, and semi-desert landscapes from the Gulf Coast to the Pacific Ocean. We conclude that any foreseeable future declines in wintering habitat, in California or elsewhere, are unlikely to imperil the mountain plover.

We estimate the current rangewide mountain plover breeding population to be over 20,000 birds. This is more than double the estimate of 8,000 to 10,000 mountain plover that we cited in our December 5, 2002, proposal to list the mountain plover as a threatened species (67 FR 72396). While we have no evidence that an actual population increase has occurred, a larger known population provides added security from current and future potential influences and threats.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats, alone or cumulatively, are not of sufficient imminence, severity, or magnitude to indicate that the mountain plover is in danger of extinction, or likely to become endangered within the foreseeable future, throughout all or a significant portion of it range. The mountain plover has experienced historical losses of native habitat resulting in a significant decline in the rangewide population. However, BBS survey results suggest that the recent (1999 through 2009) rate of decline has moderated (see Population Size and Trends above). We have no evidence that potential threats (as discussed in Factors A, B, C, D, and E) are acting on the species or its habitat in a way that would reverse this positive trend or result in an increased rate of population decline within the foreseeable future. The currently estimated rangewide mountain plover population, more than 20,000 breeding birds, is more than double that estimated in 2002, providing the species with added security should increased threats to its wellbeing arise. As stated above, the mountain plover's geographically widespread breeding and wintering ranges, and ability to exploit a variety of habitats, contribute to its security. According to the Act, the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range; the term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We conclude that the mountain plover does not meet the definition of endangered, because there is an apparent trend toward stability of the species' rangewide population, it remains widespread over both its breeding and wintering ranges, and it can exploit a variety of habitats including areas of human disturbance. In addition, we have found no threats acting on the mountain plover in a way that would drive the species towards being endangered in the foreseeable future; therefore, the species does not meet the definition of threatened. Therefore, we find that listing the mountain plover as an endangered or threatened species is not warranted throughout all or a significant portion of its range at this time (see the Significant Portion of the Range discussion below). As such, we withdraw our December 5, 2002, proposed rule (67 FR 72396) to list the mountain plover as a threatened species.

Distinct Vertebrate Population Segments/Significant Portion of the Range

After assessing whether the species is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) or whether any significant portion of the mountain plover range meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened).

Distinct Vertebrate Population Segment

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

Discreteness

Under the DPS policy a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation

status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We do not consider any population segment of mountain plover to be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Mountain plover are naturally distributed across a large landscape in a discontinuous fashion. Available breeding and wintering habitats exist in a constantly shifting mosaic of suitable habitat throughout the western Great Plains and Rocky Mountain States from Canada to Mexico. As an avian species, mountain plover are able to move long distances during migration, and to return to different geographical areas for breeding or wintering.

Although there is some evidence that mountain plover exhibit some site fidelity to their breeding areas (Graul 1973, p. 71; Skrade and Dinsmore 2010, p. 672), other studies have shown that the species can disperse over relatively long distances (Knopf and Wunder 2006; Bly 2010b, pers. comm.). There are no known barriers to movement throughout the geographic range of the species. Wunder (2007, p. 118) concluded that there is widespread mixing of mountain plover populations in winter and that birds may use alternate wintering sites in different years. A genetic study using nuclear microsatellites concluded that mountain plover across sampled breeding locations in Colorado and Montana comprised a single, relatively homogenous gene pool (Oyler-McCance *et al.* 2008, pp. 496–497). Results suggested that there was sufficient gene flow among breeding areas to offset genetic effects of small populations and reported adult fidelity to breeding areas (Oyler-McCance *et al.* 2008, pp. 496–497).

The mountain plover spans international boundaries between the United States, Canada, and Mexico; however, the vast majority of occupied breeding habitat occurs in the United States with few breeding records in Canada and Mexico. Mexico likely winters a substantial number of mountain plover that breed in the United States. The known relative distribution of mountain plover between the three countries has remained fairly constant in recent years. Additionally, we are not aware of any differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms that exist in Canada or Mexico that are significant in light of section 4(a)(1)(D) of the Act (the inadequacy of existing regulatory mechanisms). Therefore, we do not believe that international boundaries provide evidence of discrete mountain plover populations.

We determine, based on a review of the best available information, that no mountain plover population segments meet the discreteness conditions of the 1996 DPS policy. Therefore, no mountain plover population segment qualifies as a DPS under our policy, and no DPS is a listable entity under the Act.

The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Because we found that no mountain plover populations meet the discreteness element and, therefore, do not qualify as a DPS under the Service's DPS policy, we will not conduct an evaluation of significance.

Significant Portion of the Range

The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "significant portion of its range" is not defined by the statute. For the purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a significant decrease in the viability of the species.

If an analysis of whether a species is endangered or threatened in a significant portion of its range is appropriate, we engage in a systematic process that begins with identifying any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the viability of the species, such portions will not warrant further consideration.

We next address whether any portions of the mountain plover's range warrant further consideration. On the basis of our review, we found no geographic concentration of threats on breeding or wintering habitat such that the subspecies may be in danger of extinction in that portion. Although the mountain plover's wintering habitat in California is likely to decrease in the future because of changes in land use and agriculture, we have determined that the likely extent of change will not result in a significant threat to the species' ability to maintain a wintering population in California. Similarly, we found that there is no area within the breeding range of the mountain plover where the potential threat of changes to habitat are concentrated or may be substantially greater than in other portions of the range. The factors affecting the species are essentially uniform throughout its range, indicating that no portion of the mountain plover's range warrants further consideration of possible endangered or threatened status.

We request that you submit any new information concerning the status of, or threats to, the mountain plover to our Colorado Ecological Services Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the mountain plover and encourage its conservation. If an emergency situation develops for the mountain plover or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Colorado Ecological Services Office (see **ADDRESSES**).

Authors

The primary authors of this document are the staff members of the Colorado Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–11056 Filed 5–11–11; 8:45 am]

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Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 23, and 140
Capital Requirements of Swap Dealers and Major Swap Participants; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 23, and 140

RIN 3038–AD54

Capital Requirements of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations that would implement the new statutory framework in the Commodity Exchange Act (CEA), added by the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These new provisions of the CEA require, among other things, the Commission to adopt capital requirements for certain swap dealers (SDs) and major swap participants (MSPs). The proposed rules also provide for related financial condition reporting and recordkeeping by SDs and MSPs. The Commission further proposes to amend existing capital and financial reporting regulations for futures commission merchants (FCMs) that also register as SDs or MSPs. The proposed regulations also include requirements for supplemental FCM financial reporting to reflect section 724 of the Dodd-Frank Act. In order to align the comment periods for this proposed rule and the Commission's earlier proposed rulemaking on margin requirements for uncleared swaps,[1] the comment period for the proposed margin rulemaking is being extended elsewhere in the **Federal Register** today, so that commenters will have the opportunity to review the proposed capital and margin rules together before the expiration of the comment periods for either proposed rule.

DATES: Comments must be received on or before July 11, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AD54, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Deputy Director, Thelma Diaz, Associate Director, or Jennifer Bauer, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5137 and electronic mail: *tsmith@cftc.gov; tdiaz@cftc.gov;* or *jbauer@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislation Requiring Rulemaking for Capital Requirements of SDs and MSPs

On July 21, 2010, President Obama signed the Dodd-Frank Act.[3] Title VII of the Dodd-Frank Act amended the CEA[4] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The legislative mandate to establish registration and regulatory requirements for SDs and MSPs appears in section 731 of the Dodd-Frank Act, which adds a new section 4s to the CEA. Section 4s(e) explicitly requires the adoption of rules establishing capital and margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet the capital and margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with Commission's capital and margin regulations.

The term "prudential regulator" is defined in a new paragraph 39 of the definitions set forth in section 1a of the CEA, as amended by section 721 of the Dodd-Frank Act. This definition includes the Board of Governors of the Federal Reserve System (Federal Reserve Board); the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); the Farm Credit Administration; and the Federal Housing Finance Agency (FHFA). The definition also specifies the entities for which these agencies act as prudential regulators, and these consist generally of federally insured deposit institutions; farm credit banks; federal home loan banks; and the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. In the case of the Federal Reserve Board, it is the prudential regulator not only for certain banks, but also for bank holding companies and any foreign banks treated as bank holding companies. The Federal Reserve Board also is the prudential regulator for subsidiaries of these bank holding companies and foreign banks, but excluding their nonbank subsidiaries that are required to be registered with the Commission as SDs or MSPs.

In general, therefore, the Commission is required to establish capital requirements for all registered SDs and MSPs that are not banks, including nonbank subsidiaries of bank holding companies regulated by the Federal Reserve Board. In addition, certain swap activities currently engaged in by banks may be conducted in such nonbank subsidiaries and affiliates as a result of the prohibition on Federal assistance to swap entities under section 716 of the

[1] *See* 76 FR 23732 (April 28, 2011).

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission's Web site, *http://www.cftc.gov.*

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[4] 7 U.S.C. 1 *et seq.*

Dodd-Frank Act. Generally, insured depository institutions (IDIs) that are required to register as SDs may be required to comply with section 716 by "pushing-out" to an affiliate all swap trading activities with the exception of: (1) The IDI's hedging or other similar risk mitigating activities directly related to the IDI's activities; and (2) the IDI acting as a SD for swaps involving rates or reference assets that are permissible for investment under banking law.

The Commission is further required to adopt other regulations that implement provisions in section 4s related to financial reporting and recordkeeping by SDs and MSPs. Section 4s(f)(2) of the CEA specifically directs the Commission to adopt rules governing financial condition reporting and recordkeeping for SDs and MSPs, and section 4s(f)(1)(A) expressly requires each registered SD and MSP to make such reports as are required by Commission rule or regulation regarding the SD's or MSP's financial condition. The Commission also is authorized to propose record retention and inspection requirements consistent with the provisions of section 4s(f)(1)(B).[5]

B. Consultation With U.S. Securities and Exchange Commission and Prudential Regulators

Section 4s(e)(3)(D) of the CEA calls for comparability of the capital requirements that the Commission, United States Securities and Exchange Commission (SEC) and prudential regulators (together, referred to as "Agencies") adopt for SDs, MSPs, security-based swap dealers (SSDs) and major security-based swap participants (MSSPs) (together, referred to as "swap registrants"). Section 4s further specifies the expected scope and frequency of consultation by the Agencies regarding the capital requirements of swap registrants. Section 4s(e)(3)(D) requires the Agencies to establish and to maintain, to the maximum extent practicable, comparable minimum capital requirements. Section 4s(e)(3)(D) also requires the Agencies to periodically, but not less frequently than annually, consult on minimum capital requirements for swap registrants.

As directed by Dodd-Frank, and consistent with precedent for harmonizing where practicable the minimum capital and financial condition and related reporting requirements of dual registrants, staff from each of the Agencies has had the opportunity to provide oral and/or written comments to the regulations for SDs and MSPs in this proposing release, and the proposed regulations incorporate elements of the comments provided. The Commission will continue its discussions with the Agencies in the development of their respective capital regulations to implement the Dodd-Frank Act.

The Commission is relying to a great extent on existing regulatory requirements in proposing capital requirements for SDs and MSPs. Specifically, under this proposal, any SD or MSP that is required to register as an FCM would be required to comply with the Commission's existing capital requirements set forth in § 1.17 for FCMs. Furthermore, any SD or MSP that is neither a registered FCM nor a bank, but is part of a U.S. bank holding company, would be required to comply with the applicable bank capital requirements that are established by the Federal Reserve Board for bank holding companies. Lastly, any SD or MSP that was not required to register as an FCM and is not part of a U.S. bank holding company would compute its capital in accordance with proposed regulations summarized in part II of this release.

C. Considerations for SD and MSP Rulemaking Specified in Section 4(s)

Section 4s(e)(2)(C) of the CEA requires the Commission, in setting capital requirements for a person designated as a swap registrant for a single type or single class or category of swap or activities, to take into account the risks associated with other types/classes/categories of swap and other activities conducted by that person that are not otherwise subject to regulation by virtue of their status as an SD or MSP. Section 4s(e)(3)(A) also refers to the need to offset the greater risk that swaps that are not cleared pose to SDs, MSPs, and the financial system, and the Commission, SEC, and prudential regulators are directed to adopt capital requirements that: (1) Help ensure the safety and soundness of the registrant; and (2) are appropriate for the risk associated with the uncleared swaps held by the registrants.

D. Other Considerations Under the CEA for FCM Financial Responsibility Requirements

Entities that register as SDs and MSPs may include entities that also are registered as FCMs.[6] FCM registrants are subject to existing Commission regulations establishing capital, segregation, and financial reporting requirements under the CEA.[7] Two primary financial safeguards under the CEA are: (1) The requirement under section 4d(a)(2) that FCMs segregate from their own assets all money and property belonging to their customers trading on U.S. markets;[8] and (2) the requirement under section 4f(b) for compliance with minimum capital requirements for FCMs.[9] The capital requirements for FCMs are set forth in Commission § 1.17, and reporting requirements related to capital and the FCM's protection of customer funds are set forth in §§ 1.10, 1.12, and 1.16 of the Commission's regulations.[10]

1. Background on FCM Capital Requirements in § 1.17

FCM capital requirements in § 1.17 are designed to require a minimum level

[5] The Commission previously has proposed certain record retention requirements for SDs and MSPs regarding their swap activities. *See* 75 FR 76666 (Dec. 9, 2010).

[6] An FCM is defined as an individual, association, partnership, corporation, or trust that engages in soliciting or in accepting orders for: (1) The purchase or sale of a commodity for future delivery, (2) a security futures product, (3) a swap, (4) any commodity option authorized under Section 4c of the CEA, or (5) any leverage transaction authorized under section 19 of the CEA, or that is engaged in soliciting or accepting orders to act as a counterparty in any agreement, contract, or transaction described in sections 2(c)(2)(C)(i) or 2(c)(2)(D)(i) of the CEA, and in connection with such activities, accepts any money, securities or property (or extends credit) to margin, guarantee, or secure trades or contracts.

[7] The Commission's regulatory responsibilities include monitoring the financial integrity of the commodity futures and options markets and intermediaries, such as FCMs, that market participants employ in their trading activities. The Commission's financial and related recordkeeping and reporting rules are part of a system of financial safeguards that also includes exchange and clearinghouse risk management and financial surveillance systems, exchange and clearinghouse rules and policies on clearing and settlements, and financial and operational controls and risk management employed by market intermediaries themselves.

[8] The requirement that FCMs segregate customer funds is set forth in section 4d(a)(2) of the CEA. Section 4d(a)(2) requires, among other things, that an FCM segregate from its own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to such customers from open futures and option positions. Part 30 of the Commission's regulations also requires FCMs to hold "secured amount" funds for U.S. customers trading in non-U.S. futures markets separate from the firms' proprietary funds.

[9] Section 4f(b) of the CEA provides that FCMs must meet the minimum financial requirements that the Commission "may by regulation prescribe as necessary to insure" that FCMs meet their obligations as registrants.

[10] Regulation 1.10 includes a requirement for FCMs to file annual financial statements that have been certified by an independent public accountant in accordance with § 1.16. Regulation 1.10 also requires generally that FCMs file with the Commission non-certified Form 1–FR–FCM financial reports each month. Regulation 1.12 requires FCMs to provide notice of a variety of predefined events as or before they occur. Such notice is intended to provide the Commission with the opportunity to assess the FCM's ability to meet its financial requirements on an ongoing basis.

of liquid assets in excess of the FCM's liabilities to provide resources for the FCM to meet its financial obligations as a market intermediary in the regulated futures and options market. The capital requirements also are intended to ensure that an FCM maintains sufficient liquid assets to wind-down its operations by transferring customer accounts in the event that the FCM decides, or is forced, to cease operations as an FCM.

Paragraph (a) of § 1.17 addresses the first component of the FCM capital rule by specifying the minimum amount of adjusted net capital that a registered FCM is required to maintain. Specifically, § 1.17 sets the minimum adjusted net capital requirement as the greatest of: (1) $1,000,000; (2) for an FCM that engages in off-exchange foreign currency transactions with persons that are not eligible contract participants as defined in section 1a(12) of the CEA (i.e. retail participants), $20,000,000, plus 5 percent of the FCM's liabilities to the retail forex participants that exceeds $10,000,000; (3) 8 percent of the risk margin (as defined in § 1.17(b)(8)) of customer and non-customer exchange-traded futures positions and over-the-counter (OTC) swap positions that are cleared by a clearing organization and carried by the FCM; (4) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; and (5) for an FCM that also is registered as securities broker or dealer, the amount of net capital required by rules of the SEC.

The requirements for the calculation of the FCM's adjusted net capital represent the second component of the FCM capital rule. Regulation 1.17(c)(5) generally defines the term "adjusted net capital" as an FCM's "current assets", i.e., generally liquid assets, less all of its liabilities (except certain qualifying subordinated debt), and further reduced by certain capital charges (or haircuts) to reflect potential market and credit risk of the firm's current assets.

2. Capital Required for Uncleared Swaps Under § 1.17

FCMs historically have not engaged in significant OTC derivatives transactions. The capital treatment of such transactions under § 1.17 is one of the factors that has resulted in OTC transactions being conducted in affiliated entities. Specifically, an FCM in computing its adjusted net capital is required to mark its OTC derivatives position to market, and to reflect any unrealized gain or loss in its statement of income. If the FCM experiences an unrealized loss on its OTC derivatives position, the unrealized loss is recorded as a liability to the counterparty and results in a reduction of the firm's adjusted net capital. If the FCM experiences an unrealized gain on the OTC derivatives position, the FCM would record a receivable from the counterparty. If the receivable was not secured through the receipt of readily marketable financial collateral, the FCM would be required to exclude the receivable from the calculation of its current assets under § 1.17(c)(2)(ii).

An FCM, in computing its adjusted net capital, is further required to compute a capital charge to reflect the potential market risk associated with its OTC derivatives positions. Regulation 1.17(c)(5) establishes specific capital charges for market risk for an FCM's proprietary positions in physical inventory, forward contracts, fixed price commitments, and securities. Historically, the Commission has required an FCM to use the capital charge provisions specified in § 1.17(c)(5)(ii), or capital charges established by the SEC for securities brokers or dealers, for its OTC derivatives positions.

3. Capital and Reporting Requirements for FCMs That Also Are SDs or MSPs

Section 4s(e)(3)(B)(i) of the CEA recognizes that the requirements applicable to SDs and MSPs under section 4s do not limit the Commission's authority with respect to FCM regulatory requirements. Furthermore, with respect to cleared swaps, section 724 of the Dodd-Frank Act provides that if a SD or MSP accepts any money, securities, or property (or extends credit in lieu of money, securities, or property) from, or on behalf of, a swaps customer to margin, guarantee, or secure a swap position cleared by or through a derivatives clearing organization, the SD or MSP must register with the Commission as an FCM.[11] Therefore, the requirement to comply with CFTC FCM capital requirements extends to SDs and MSPs that are required to register as FCMs as a result of carrying customer accounts containing cleared swap positions. This would include SDs and MSPs that are subject to regulation by prudential regulators, and are required to register as FCMs. In part II.B of this release, the Commission proposes specific capital and financial reporting requirements applicable to FCMs that also are registered as SDs or MSPs.

E. Structure and Approach

Consistent with the objectives set forth above, part II of this release summarizes regulations that the Commission proposes in order to establish minimum capital and financial reporting requirements for SDs and MSPs that are not banks. As noted in previous proposed rulemaking issued by the Commission, the Commission intends, where practicable, to consolidate regulations implementing section 4s of the CEA in a new part 23.[12] By this **Federal Register** release, the Commission is proposing to adopt the capital requirements and related financial condition reporting requirements of SDs and MSPs under subpart E of part 23 of the Commission's regulations.

In addition to the amendments being proposed for subpart E of part 23, the Commission also is proposing certain other amendments to FCM regulations contained in part 1. The proposed regulations for SD and MSP capital and financial reporting, as well as capital and financial reporting requirements for FCMs, are discussed in part II of this release. Additional amendments for part 140 of the Commission's regulations are discussed in part III of this release.

II. Proposed Capital and Financial Reporting Regulations Under Part 23 for SDs and MSPs and Part 1 for FCMs

Proposed § 23.101 would specify capital requirements applicable to SDs and MSPs. Regulation 23.101 includes language specifying exemptions from the Commission's proposed SD–MSP capital rules, however, for any SD or MSP that is: (1) Subject to regulation by a prudential regulator; (2) designated by the Financial Stability Oversight Council as a systemically important financial institution (SIFI) and subject to supervision by the Federal Reserve Board; or (3) registered as an FCM.

The capital requirements of SDs and MSPs that are subject to regulation by a prudential regulator would be established by the prudential regulator. As identified by the prudential regulators, applicable capital regulations for the entities they regulate include the following: (1) In the case of insured depository institutions, the capital adequacy guidelines adopted under 12

[11] Section 724 of the Dodd-Frank Act amends Section 4d of the CEA by adding a new provision, Section 4d(f)(1), which provides that it is unlawful for any person to accept money, securities, or other property from or on behalf of a swap customer to margin, guarantee or secure a swap cleared by or through a derivatives clearing organization unless the person is registered as an FCM under the CEA. *See, also,* Section 4s(e)(3)(B)(i)(I) of the CEA, as amended by Section 731 of the Dodd-Frank Act, which provides the Commission with authority to impose capital requirements upon SDs and MSPs that are registered as FCMs.

[12] *See* 75 FR 71379, 71383 (November 23, 2010).

U.S.C. 1831o; (2) in the case of a bank holding company or savings and loan holding company, the capital adequacy guidelines applicable to bank holding companies under 12 CFR part 225; (3) in the case of a foreign bank or the U.S. branch or agency of a foreign bank, the applicable capital rules pursuant to 12 CFR 225.2(r)(3)(i); (4) in the case of "Edge corporations" or "Agreement corporations", the applicable capital adequacy guidelines pursuant to 12 CFR 211.12(c)(2); (5) in the case of any regulated entity under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (*i.e.,* Fannie Mae and its affiliates, Freddie Mac and its affiliates, and the Federal Home Loan Banks), the risk-based capital level or such other amount as required by the Director of FHFA pursuant to 12 U.S.C. 4611; (6) in the case of the Federal Agricultural Mortgage Corporation, the capital adequacy regulations set forth in 12 CFR part 652; and (7) in the case of any farm credit institution (other than the Federal Agricultural Mortgage Corporation), the capital regulations set forth in 12 CFR part 615.[13]

Any SD or MSP that was determined to be a SIFI by the Financial Stability Oversight Council would be subject to supervision by the Federal Reserve Board.[14] In this proposal, the Commission is electing not to impose an additional capital requirement on a SD or MSP that is designated a SIFI and subject to regulation of the Federal Reserve Board. As part of the application process (and similar to FCM application requirements under § 1.17), proposed § 23.101 would require an applicant for registration as an SD or MSP to demonstrate its compliance with the applicable Commission-imposed regulatory capital requirements, or to demonstrate instead that it is supervised by a prudential regulator or is designated as a SIFI.

While the Commission is not proposing to impose capital requirements on a registered SD or MSP that is subject to prudential regulation or is designated as a SIFI, the Commission is proposing to require such an entity to file capital information with the Commission upon request. Proposed § 23.105(c)(2) provides that, upon the request of the Commission, each SD or MSP subject to prudential supervision or designated as a SIFI must provide the Commission with copies of its capital computations and accompanying schedules and other supporting documentation. The capital computations must be in accordance with the regulations of the applicable prudential regulator with jurisdiction over the SD or MSP.

Furthermore, any SD or MSP that is required to register as an FCM, including an SD or MSP that is subject to supervision by a prudential regulator or is designated a SIFI and subject to regulation by the Federal Reserve Board, would be subject to the capital requirements set forth in § 1.17 for FCMs. Part II.B.2 of this release discusses the applicable requirements for FCMs that also are registered as SDs or MSPs.

A. Proposed Minimum Capital Requirements for SDs and MSPs That Are Not FCMs

1. Subsidiaries of Bank Holding Companies

The requirements for SDs and MSPs under proposed § 23.101 reflect the fact that these firms may include subsidiaries of U.S. bank holding companies that are required by section 716 of Dodd-Frank to "push out" to an affiliate certain swap trading activities. The prudential regulators for the banks that may be required to comply with section 716 include the Federal Reserve Board, the FDIC, and the OCC. The capital rules of these banking agencies have addressed OTC derivatives since 1989, when the banking agencies implemented their risk based capital adequacy standards under the first Basel Accord.[15] As noted by these banking agencies, they have amended and supplemented their capital rules over time to take into account developments in the derivatives markets, including through the addition of market risk amendments which required banks and bank holding companies meeting certain thresholds to calculate their capital requirements for trading positions through models approved by the appropriate banking regulator. The banks affected by the provisions of Section 716 also may include certain large, complex banks, which together with certain bank holding companies are subject to other requirements for computing credit risk requirements under Basel II capital standards that have been implemented by these banking agencies.[16] The Federal Reserve, OCC, and FDIC also have stated their intention to implement requirements under recent Basel III proposals, which would establish additional capital requirements for the banks and bank holding companies for which these banking agencies are the prudential regulator.

Described in very general terms, the capital rules adopted by these banking agencies establish the required minimum amount of regulatory capital in terms of a "minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital."[17] For purposes of this requirement, the assets and off-balance sheet items of the bank or bank holding company are weighted relative to their risk (primarily credit risk): The greater the risk, the greater the weighting. Large, complex banks must make further adjustments to these risk-weighted assets for the additional capital they must hold to reflect the market risk of their trading assets. The bank or bank holding company's total capital must equal or exceed at least 8 percent of its risk-weighted assets, and at least half of its total capital must meet the more restrictive requirements of the definition of Tier 1 capital. For example, a bank's total capital, but not its Tier 1 capital, may include certain mandatory convertible debt.[18]

The terms of proposed § 23.101 have been drafted to maintain consistent capital requirements among bank and nonbank subsidiaries (other than FCM

[13] See joint proposed rulemaking issued by the prudential regulators on April 12, 2011, titled "Margin and Capital Requirements for Covered Swap Entities."

[14] Section 113 of the Dodd-Frank Act sets forth the process by which U.S. nonbank financial companies (as defined in section 102(a)(4)(B) of the Dodd-Frank Act) may be designated as systemically important. Accordingly, a company that is registered as a SD or MSP with the Commission may be designated as a SIFI by the Financial Stability Oversight Council under a process laid out in Title I of the Dodd-Frank Act. Entities that are designated as SIFIs under Title I of the Dodd-Frank Act are considered to be supervised by the Federal Reserve Board.

[15] The Basel Committee on Banking Supervision is a committee of banking supervisory authorities established in 1974 by the central-bank Governors of the Group of Ten countries. In 1988, the Basel Committee published a document titled the "International Convergence of Capital Measurement and Capital Standards" (the "Basel Capital Accord"), which set forth an agreed framework for measuring capital adequacy and the minimum requirements for capital for banking institutions. There have been several amendments to the Basel Capital Accord in the intervening years, including, in January of 1996, the "Amendment to the Capital Accord to Incorporate Market Risks." The Basel Committee issued a revised framework in June of 2004 ("Basel II"), and has continued to propose additional amendments thereafter. In 2010, the Basel Committee issued further requirements for internationally active banks that are set forth in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems."

[16] The advanced approaches rules are codified at 12 CFR part 325, appendix D (FDIC); 12 CFR part 3, appendix C (OCC); and 12 CFR part 208, appendix F and 12 CFR part 225, appendix G (Federal Reserve Board).

[17] See, 12 CFR part 225, appendix A, § II.A.

[18] Mandatory convertible debt securities are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments.

subsidiaries) of a U.S. bank holding company. By meeting requirements in the specified banking regulations, the SD or MSP will be subject to comparable capital regulations applicable to their parent U.S. bank holding companies, including the same credit risk and market risk capital requirements. Establishing a regime that imposes consistent capital requirements on nonbank subsidiaries, bank holding companies, and banks with respect to their swap activities further enhances the regulatory regime by attempting to remove incentives for registrants to engage in regulatory arbitrage.

The Commission has determined that it is appropriate to defer to the Federal Reserve Board's existing capital requirements for SDs and MSPs that are nonbank subsidiaries of a U.S. bank holding company because the existing capital requirements encompass the scope of the swaps activity and related hedging activity contemplated under the Dodd-Frank Act; the existing requirements sufficiently account for certain risk exposures, including credit and market risks; and the existing requirements meet the statutory requirement of ensuring the safety and soundness of the SD or MSP and are appropriate for the risk associated with the non-cleared swaps held by the SD or MSP.[19]

The proposed regulation provides that a SD or MSP that is a nonbank subsidiary of a U.S. bank holding company would have to comply with a regulatory capital requirement specified by the Federal Reserve Board as if the subsidiary itself were a U.S. bank holding company. The scope of such a regulatory capital requirement would include the swap transactions and related hedge positions that are part of the SD's or MSP's swap activities. Specifically, the SD or MSP would be required to comply with a regulatory capital requirement equal to or in excess of the greater of: (1) $20 million of Tier 1 capital as defined in 12 CFR part 225, appendix A, § II.A;[20] (2) the SD's or MSP's minimum risk-based ratio requirements, as if the subsidiary itself were a U.S. bank holding company subject to 12 CFR part 225, and any appendices thereto; or (3) the capital required by a registered futures association of which the SD or MSP is a member.

The proposed $20 million minimum Tier 1 capital requirement is consistent with the minimum adjusted net capital requirement that Congress established for Commission registrants engaging in bilateral off-exchange foreign currency transactions with retail participants.[21] The Commission believes that SDs and MSPs that engage in bilateral swap transactions should be subject to a minimum capital requirement that is at least equal to the minimum level of capital Congress established for registrants engaged in retail bilateral off-exchange foreign currency transactions.

The additional proposed minimum capital requirement based on membership requirements of a registered futures association is similar to FCM requirements under § 1.17, and is appropriate in light of proposed Commission rules that would require each SD and MSP to be a member of a registered futures association. Currently, the National Futures Association (NFA) is the only registered futures association. The proposal recognizes that NFA may adopt SD and MSP capital rules at some later date, and would incorporate such requirements into the Commission's regulation.

2. Commercial and Other Firms That Are Not Part of Bank Holding Companies

Certain SDs and MSPs subject to proposed regulation § 23.101 may be commercial firms or other entities with no affiliations to U.S. bank holding companies. For such SDs and MSPs, the proposed rule would require that their regulatory capital requirement as measured by "tangible net equity" meet or exceed: (1) $20 million of "tangible net equity," plus the amount of the SD's or MSP's over-the-counter derivatives credit risk requirement and additional market risk exposure requirement (as defined below), or (2) the capital required by a registered futures association of which the SD or MSP is a member.

For purposes of the proposed capital requirement, the term "tangible net equity" is defined in proposed § 23.102 as a SD's or MSP's equity as computed under generally accepted accounting principles as established in the United States, less goodwill and other intangible assets.[22] The proposal would further require an SD or MSP in computing its tangible net equity to consolidate the assets and liabilities of any subsidiary or affiliate for which the SD or MSP guarantees the obligations or liabilities. In accordance with similar provisions in existing capital rules for FCMs, the proposal further provides that the SD or MSP may consolidate the assets and liabilities of a subsidiary or affiliate of which the SD or MSP has not guaranteed the obligations or liabilities, provided that the SD or MSP has obtained an opinion of counsel stating that the net asset value of the subsidiary or affiliate, or the portion of the net asset value attributable to the SD or MSP, may be distributed to the SD or MSP within 30 calendar days. Lastly, the proposal would further require that each SD or MSP included within the consolidation shall at all times be in compliance with its respective minimum regulatory capital requirements. The requirement for the SD or MSP to calculate its tangible net equity on a consolidated basis is consistent with the requirements in § 1.17 for FCMs, and ensures that the SD's or MSP's tangible net equity reflects any liabilities and other obligations for which the SD or MSP may be directly or indirectly responsible.

The term "over-the-counter derivatives credit risk requirement" is defined in proposed § 23.100 and refers to the capital that the SD or MSP must maintain to cover potential counterparty credit exposures for receivables arising from OTC swap positions that are not cleared by or through a clearing organization. The term "additional market risk exposure requirement" is defined in proposed § 23.100 and refers to the additional amount of capital the SD or MSP must maintain for the total potential market risk associated with such swaps and any product used to hedge such swaps, including futures, options, other swaps or security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The Commission is proposing to include swap transactions and related hedge positions that are part of the SD's swap activities in the over-the-counter derivatives credit risk requirement and market risk exposure requirement, and not swap positions or related hedges that are part of the SD's commercial operations.[23] MSPs would

[19] Section 4s(e)(3)(A)(i) and (ii) of the CEA.

[20] The Federal Reserve Board regulations governing bank holding companies are set forth in at 12 CFR part 225. These regulations establish a minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital.

[21] *See* sections 2(c)(2)(B)(i) and (ii) of the CEA.

[22] The Commission is explicitly requesting comment on whether certain intangible assets, such as royalties, should be permitted in the SD's or MSP's calculation of tangible net equity.

[23] For example, if an SD entered into a swap transaction with a counterparty as part of its swap dealing activities, the over-the-counter derivatives credit risk requirement and market risk exposure requirement associated with the swap position and any positions hedging or otherwise related to the swap position would be included in the SD's calculation of its minimum capital requirement. If, however, an SD entered into a swap transaction to

include all swap positions in the market risk and over-the-counter derivatives credit exposure requirement. A discussion of the methodology for computing the over-the-counter derivatives credit risk requirement and the market risk exposure requirement is set forth in part II.C. of this release.

The computation of regulatory capital based upon an SD's or MSP's tangible net equity is a significant, but necessary, departure from the Commission's traditional adjusted net capital rule for FCMs. A primary distinction between the tangible net equity and adjusted net capital methods is that the tangible net equity approach does not require that a registrant maintain the same degree of highly liquid assets as the traditional FCM adjusted net capital computation. The proposed tangible net equity computation would allow SDs and MSPs to include in their minimum capital computation assets that would not qualify as current assets under FCM adjusted net capital requirements, such as property, plant and equipment, and other potentially-illiquid assets.

The Commission is proposing a capital requirement based upon a SD's or MSP's tangible net equity based upon its understanding that potential SD and MSP registrants do not conduct their business operations in a manner comparable to traditional FCMs. For example, certain entities that are extensively or primarily engaged in the energy or agricultural business may be required to register as SDs or MSPs. Although these SDs and MSPs may have significant amounts of balance sheet equity, it may also be the case that significant portions of their equity is comprised of physical and other non-current assets, which would preclude the firms from meeting FCM capital requirements without engaging in significant corporate restructuring and incurring potentially undue costs.

The Commission believes that setting a capital requirement that is different from the traditional FCM adjusted net capital approach is acceptable for SDs and MSPs that are not acting as market intermediaries in the same manner as FCMs. Readily available liquid assets are essential for FCMs to meet their key financial obligations. FCMs have core obligations for the funds they hold for and on behalf of their customers, and FCMs further guarantee their customers' financial obligations with derivatives clearing organizations, including obligations to make appropriate initial and variation margin payments to derivatives clearing organizations. SDs and MSPs, however, do not interact with derivatives clearing organizations to clear customer transactions and cannot engage in transactions with customers trading on designated contract markets without registering as FCMs.

B. Proposed Minimum Capital Requirements for SDs and MSPs That Are FCMs

The Commission is proposing to essentially impose the current FCM capital regime on SDs and MSPs that also are registered as FCMs. FCMs currently are required, pursuant to § 1.17, to maintain a minimum level of adjusted net capital that is equal to or greater than the greatest of: (1) $1,000,000; (2) $20,000,000 for an FCM engaged in off-exchange foreign currency transactions with retail participants, plus an additional 5 percent of the total liabilities to the retail foreign currency customers that exceeds $10,000,000; (3) the sum of 8 percent of the risk margin on cleared futures and cleared swap positions carried in customer and non-customer accounts; (4) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; and (5) for an FCM that also is registered as a securities broker-dealer, the amount of net capital required by rules of the SEC.[24]

The Commission is proposing amendments to § 1.17 that would impose a minimum $20 million adjusted net capital requirement if the FCM also is an SD or MSP. The $20 million minimum requirement is consistent with the Commission's proposal to adopt a $20 million minimum capital requirement for SDs and MSPs that are not FCMs, and is further consistent with the Commission's recent adoption of a $20 million minimum capital requirement for FCMs that engage in off-exchange foreign currency transactions with retail participants.

Furthermore, the Commission notes that the current capital regulations would impose a risk-based capital requirement on SDs and MSPs that are required to register as FCMs as a result of their carrying and clearing of customer swap or futures transactions with a clearing organization. As noted above, the current regulation requires an FCM to maintain adjusted net capital that is equal to or greater than 8 percent of the risk margin associated with cleared futures and swap transactions carried by the FCM in customer and non-customer accounts. The 8 percent of margin, or risk-based capital rule, is intended to require FCMs to maintain a minimum level of capital that is associated with the level of risk associated with the customer positions that the FCM carries.

C. Required Calculations for Credit Risk and Market Risk Requirements

The proposed regulations include an application process by which certain SDs and MSPs may apply to the Commission for approval to use proprietary internal models for their capital calculations required by part 23. For those SDs and MSPs whose calculations are not permitted to be based upon such models, the proposed regulations sets forth other specified requirements for the SD's or MSP's required market and credit risk calculations.

1. Request for Approval of Calculations Using Internal Models

The Commission recognizes that internal models, including value-at-risk (VaR) models, can provide a more effective means of recognizing the potential economic risks or exposures from complex trading strategies involving OTC derivatives and other investment instruments. In this connection, the Commission has previously adopted § 1.17(c)(6), which allows certain FCMs that are dually-registered with the SEC to elect to use internally developed models to compute market risk deductions for proprietary positions in securities, forward contracts, foreign currency, and futures contracts, and credit risk deductions for unsecured receivables from counterparties in OTC transactions (the "Alternative Capital Computation") in lieu of the standard deductions set forth in § 1.17(c). A precondition of using the Alternative Capital Computation is the SEC's review and written approval of the firm's application to use internal models in computing its capital under SEC regulations, and the requirement that the model and the firm's risk management meet certain qualitative and quantitative requirements set forth in SEC Rule 15c3–1e. The firm also was required to maintain at least $1 billion of tentative net capital and $500 million in net capital.[25] The firm further was obligated to report to the SEC and to the

mitigate risk associated with its commercial activities, the swap position and any related positions would not be included in the SD's calculation of its minimum capital requirement.

[24] FCMs that register as security-based swap dealers also will be subject to minimum capital requirements established by the SEC for security-based swap dealers.

[25] *See* 17 CFR 15c3–1(a)(7).

CFTC if its tentative net capital fell below $5 billion.[26]

Significant resources, however, are necessary for regulators to effectively assess and to periodically review proprietary internal models. Absent concerns regarding future Commission resources to implement an adequate program for the effective direct supervision of internal models used by SDs and MSPs, the Commission would propose regulations to establish a framework by which FCMs that are registered as SDs or MSPs could submit internal models to the Commission for review and approval for use in their required capital calculations. Such a program would include the continuous and direct review by Commission staff of the policies and procedures applicable to, and output of, such proprietary models.

In view, however, of current Commission resources which does not support the development of a program to conduct the initial review and ongoing assessment of internal models, and the uncertainty of future funding levels for the necessary staffing resources, this release provides for an application process for approval of SD and MSP capital calculations using internal models, but limits the initial pool of applicants to those whose internal models are subject to review by the Federal Reserve Board or the SEC. Specifically, proposed § 23.103 would permit a nonbank SD or MSP that also is part of a U.S. bank holding company subject to oversight by the Federal Reserve Board to apply to the Commission for approval by written order to use proprietary internal models to compute market risk and credit risk capital requirements under the applicable U.S. bank holding company regulations. The SD or MSP also may apply for such approval if it also is registered as an SSD or MSSP, and the internal models for which it seeks approval have been reviewed and are subject to the regular assessment by the SEC.

a. Application Process and Requirements for Internal Models

As set forth in the proposed regulation, the application must address several factors including: (1) Identifying the categories of positions that the SD or MSP holds in its proprietary accounts; (2) describing the methods that the SD or MSP will use to calculate its market risk and credit risk capital requirements; (3) describing the internal models; and (4) describing how the SD or MSP will calculate current exposure and potential future exposure. The SD or MSP also must explain the extent to which the internal models have been reviewed and approved by the Federal Reserve Board, or, as applicable, the SEC.

The proposal would further provide that the internal models must meet such requirements as are adopted by U.S. regulators under the Basel Accord, including requirements implemented as part of Basel III. In particular, the internal models must meet the requirements that are set forth in regulations of the Federal Reserve Board at 12 CFR part 225, appendix E and appendix G applicable to market risk and OTC counterparty credit risk; or, as applicable to SSDs or MSSPs, the requirements set forth in SEC regulations. Such requirements include, but are not limited to, the requirements in these regulations to assess the effectiveness of such models by conducting appropriate backtesting and for the application of multipliers to the model outputs that would be based on the results of such backtesting.

The proposed regulation further specifies that the application shall be in writing and filed with the regional office of the Commission having jurisdiction over the SD or MSP as set forth in § 140.2 of the Commission's regulations. The application may be filed electronically in accordance with instructions approved by the Commission and specified on the Commission's Web site. A petition for confidential treatment of information within the application may be submitted according to procedures set forth in § 145.9. The proposed rule further provides that the SD or MSP must promptly, upon the request of the Commission at any time, provide any other explanatory information as the Commission may require at its discretion regarding the SD's or MSP's internal models and related capital computations.

As set forth in proposed § 23.103, upon recommendation by Commission staff, the Commission may approve the application, or approve an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest or for the protection of investors, after determining, among other things, whether the applicant has met the requirements of this section and is in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations. The proposed rule also specifies the following conditions under which such Commission approval may be terminated: (1) Internal models that were previously approved are no longer approved or periodically reviewed by the Federal Reserve Board or the SEC; (2) the SD or MSP has changed materially a mathematical model described in the application or changed materially its internal risk management control system without first submitting amendments identifying such changes and obtaining Commission approval for such changes; (3) the Commission in its own discretion determines that as a result of changes in the operations of the SD or MSP the internal models are no longer sufficient for purposes of the capital calculations of the SD or MSP; (4) the SD or MSP fails to come into compliance with its requirements under the terms of the Commission's approval under § 23.103, after having received from the Commission's designee written notification that the firm is not in compliance with its requirements, and must come into compliance by a date specified in the notice; or (5) upon any other condition specified in the Commission approval order.

b. Approval Criteria if SD or MSP Also Is an FCM

If the application made under proposed part 23 is from an SD or MSP that also is an FCM, proposed § 23.103 provides that the application shall specify that the firm requests approval to calculate its adjusted net capital (not tangible net equity or other regulatory capital) using proprietary internal models. The Commission also is proposing to provide in § 1.17(c)(7) that any FCM that also is registered as an SD or MSP, or also is registered as an SSD or MSSP, and which has received approval of its application to the Commission under § 23.103 for capital computations using the firm's internal models, shall calculate its adjusted net capital in accordance with the terms and conditions of such Commission approval. The Commission further is proposing to amend § 1.17(c)(6)(i) to recognize the possibility that FCMs that have been authorized to elect to use the Alternative Capital Computation may be SDs or MSPs and required to register as such with the Commission. The amended § 1.17(c)(6)(i) would permit these FCMs to continue to apply the Alternative Capital Computation pending the Commission's determination of the application that such FCMs must file under proposed part 23.

[26] *See* 17 CFR 15c3–1e(e)(1).

2. Calculations by SDs and MSPs That Are Not Using Internal Models and Are Not FCMs

As noted earlier, the internal models that may be approved for use in the capital calculations of SDs and MSPs must meet qualifying standards under the Basel Accord. In addition to specifying qualifying criteria for internal models, the Basel Accord also includes other requirements for capital calculations that do not incorporate measurements from the firm's internal models.

a. OTC Derivatives Credit Risk

Proposed § 23.104 sets forth capital calculations for OTC derivatives credit risk that are based on Basel requirements that do not incorporate internal models. The proposed required credit risk deduction also includes a concentration charge specified in SEC Rule 15c3–1e. The charge as proposed would equal the sum of (1) a counterparty exposure charge (summarized below) and (2) a counterparty concentration charge, which would equal 50 percent of the amount of the current exposure to any counterparty in excess of 5 percent of the SD's or MSP's applicable minimum capital requirement, plus a portfolio concentration charge of 100 percent of the amount of the SD's or MSP's aggregate current exposure for all counterparties in excess of 50 percent of the SD's or MSP's applicable minimum capital requirement.

The counterparty exposure charge would equal the sum of the net replacement values in the accounts of insolvent or bankrupt counterparties plus the "credit equivalent amount" of the SD's or MSP's exposure to its other counterparties. The SD or MSP would be permitted to offset the net replacement value and the credit equivalent amount by the value of collateral submitted by the counterparty, as specified and subject to certain haircuts in the proposed rule. The resultant calculation would be multiplied by a credit risk factor of 8 percent.

For purposes of this computation, the credit equivalent amount would equal the sum of the SD's or MSP's current exposure and potential future exposure to each of its counterparties that is not insolvent or bankrupt. The current exposure for multiple OTC positions would equal the greater of (i) the net sum of all positive and negative mark-to-market values of the individual OTC positions, subject to permitted netting pursuant to a qualifying master netting agreement; or (ii) zero.[27] The potential future exposure for multiple OTC positions that are subject to a qualifying master netting agreement is calculated in accordance with the following formula: Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where: (i) Agross equals the sum of the potential future exposure for each individual OTC position [28] subject to the swap trading relationship documentation that permits netting; [29] and (ii) NGR equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures of all individual OTC derivative contracts subject to any netting provisions of the swap trading relationship documentation, which must be legally enforceable in each relevant jurisdiction, including in insolvency proceedings. The proposed rule also requires that the gross receivables and gross payables subject to the netting agreement can be determined at any time; and that the SD or MSP, for internal risk management purposes, monitors and controls its exposure to the counterparty on a net basis. The credit risk equivalent amount may be reduced to the extent of the market value of collateral pledged to and held by the swap dealer or major swap participant to secure an over-the-counter position. The collateral would be subject to the following requirements:

- The collateral must be in the swap dealer or major swap participant's physical possession or control; *Provided, However,* collateral may include collateral held in independent third party accounts as provided under part 23;
- The collateral must meet the requirements specified in a credit support agreement meeting the requirements of § 23.151;
- If the counterparty is a swap dealer, major swap participant or financial entity as defined in § 23.150, certain additional requirements apply as described in the proposed rule at § 23.104(j); and
- Applicable haircuts must be applied to the market value of the collateral.

Once the credit equivalent amount is computed as described above, the SD or MSP would be required to apply a credit risk factor of 50 percent, regardless of any credit rating of the counterparty by any credit rating agency.[30] However, the SD or MSP also may apply to the Commission for approval to assign internal individual ratings to each of its counterparties, or for an affiliated bank or affiliated broker-dealer to do so. The application will specify which internal ratings will result in application of a 20 percent risk weight, 50 percent risk weight, or 150 percent risk weight. Based on the strength of the applicant's internal credit risk management system, the Commission may approve the application. The SD or MSP must make and keep current a record of the basis for the credit rating for each counterparty, and the records must be maintained in accordance with § 1.31 of the Commission's regulations.

b. Additional Market Risk Exposure

Proposed § 23.103 specifies required calculations for market risk that are based on Basel "standardized" measurement procedures for assessing market risk arising from positions in traded debt and equity and in commodities and foreign currencies. The Basel standardized approach also includes market risk exposure requirements for options that have debt instruments, equities, foreign currency, or commodities as the underlying positions. Although proposing requirements based on the Basel standardized approach for market risk calculations, Commission staff recognizes that the Basel Accord expressly supports capital requirements based on internal risk measurement models as the better approach for a bank that has a significant business in options or commodities.[31] However, as discussed above, absent a program for the review and approval of internal

[27] For a single OTC position, the current exposure is the greater of the mark-to-market value of the over-the-counter position or zero.

[28] For a single over-the-counter position, the potential future exposure, including an over-the-counter position with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the position by the appropriate conversion factor in Table E of the proposed rules. Table E is the same as the table proposed as "Table to 1.3(sss)" in proposed rulemaking issued jointly by the CFTC and SEC for purposes of the further definition of the term "major swap participant." *See* 75 FR 80174, 80214 (December 21, 2010). Both tables remove any references to credit ratings and require the same charge to be applied to all corporate debt regardless of rating.

[29] 76 FR 6715.

[30] The Basel credit risk factors are determined for counterparties based on credit ratings assigned by credit rating agencies to such counterparties. Section 939A of the Dodd-Frank Act requires the Commission to review and modify regulations that place reliance on credit rating agencies. Accordingly, the Commission is proposing a 50 percent credit risk factor in lieu of assigning a credit risk factor based on ratings issued by credit rating agencies.

[31] *See* "Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework—Comprehensive Version," issued by the Basel Committee on Banking Supervision in June 2006.

models, the Commission believes that this established approach is the most appropriate method for computing market risk charges.

The Basel standardized charges seek to address "general market risk," meaning the risk of changes in the market value of transactions that arise from broad market movements, such as changing levels of market interest rates, broad equity indices, or currency exchange rates. Where applicable, the Basel standardized charges also seek to address "specific" risk, which is defined as changes in the market value of a position due to factors other than broad market movements. Such specific risk may include default risk,[32] event risk (the risk of loss on a position that could result from sudden and unexpected large changes in market prices or specific events other than the default of the issuer), and idiosyncratic risk (the risk of loss in the value of a position that arises from changes in risk factors unique to that position).

Applying the Basel standardized approach, the proposed rules require the calculation of separate charges for general and specific market risk for positions in equities and debt instruments (including options with underlying instruments in these categories), which are summed to determine the total charge required with respect to such positions. Only general market charges are calculated for positions in commodities and foreign currencies (including options with underlying instruments in these categories). For purposes of computing such specific and general market risk charges, off-balance sheet positions are included. For example, swaps are included in the calculation as two positions, with a receiving side treated as a long position and a paying side treated as a short position, and using market values of the notional position in the underlying debt or equity instrument, or index portfolio. The required calculations for specific risk and general market risk charges are described in more detail below.

i. Specific Risk

For positions in equities, the proposed specific risk charge equals 8 percent of the firm's gross equity positions, i.e., the absolute sum of all long equity positions and of all short equity positions, with netting allowed when the SD or MSP has long and short positions in exactly the same instrument.

The specific risk charge required for debt instruments is based on risk-weight factors applied to the debt instrument positions of the SD or MSP. The applicable required risk weight factor is based in part on the identity of the obligor. For example, all positions in debt instruments of national governments of the Organization of Economic Co-operation and Development ("OECD") countries are assigned zero specific risk. Other debt securities issued by "qualifying" borrowers are assigned risk weights that vary by maturity; specifically, 0.25 percent (6 months or less); 1 percent (6 to 24 months); or 1.6 percent (over 24 months). Qualifying debt instruments include those issued by U.S. government-sponsored agencies; general obligation debt instruments issued by states and other political subdivisions of OECD countries and multilateral development banks; and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.

The Basel standardized approach also permits certain rated corporate debt securities to be included as qualifying debt. However, given the legislative directive to eliminate the use of credit ratings in Commission regulations, the proposed rules do not permit any differentiation among the charges applied to corporate debt securities. As a result, the proposed rule would apply the same haircut to highly-rated debt as to debt that is not highly-rated, i.e., the maximum specific risk weight of 8 percent. The total proposed specific risk charge for debt instruments would equal the sum of the risk-weighted positions, with netting allowed for long and short positions (including derivatives) in identical debt issues or indices.

In drafting the terms of proposed § 23.103, the Commission has taken into consideration Basel provisions relating to specific risk that have been incorporated into banking regulations of the Federal Reserve Board, FDIC, and OCC.[33] These agencies have recently, however, proposed revisions to their general market risk and specific risk rules in light of certain amendments to the Basel Accord developed in 2005 and 2009.[34] The revisions proposed by these banking agencies include requirements applicable to the treatment of credit derivatives in the calculation of standardized specific risk charges, and the proposed rules also set forth other offsetting permitted under the Basel Accord for positions in a credit derivative and its corresponding underlying instrument. The Commission's proposed requirements for credit derivatives include text that is based on the banking agencies' proposed rules. In particular, the text in proposed § 23.104(c)(5) is the same as the text proposed by the proposed banking agencies.

ii. General Market Risk Charges

In contrast to the Basel standardized approach to specific risk charges, the federal banking agencies have not adopted the Basel standardized approach for computing general market risk capital charges.[35] In 1995, U.S. banking regulators considered proposed rules to implement two approaches under the Basel Accord for the capital treatment of market risk: the internal models approach and the standardized approach. These agencies subsequently determined, however, that only the internal models approach would apply to general market risk capital charges, noting that "an institution with significant exposure to market risk can most accurately measure that risk using detailed information available to the institution about its particular portfolio processed by its own risk measurement model." [36] The Commission, however, is proposing the Basel standardized approach since such an approach does not rely upon proprietary internal models. The terms in the proposed § 23.104 for general market risk therefore take into consideration the terms originally contemplated by these banking agencies in the 1995 proposed

[32] Default risk is the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal or interest on its debt obligation, and the risk of loss that could result from bankruptcy, insolvency, or similar proceeding. For credit derivatives, default risk means the risk of loss on a position that could result from the default of the reference exposure(s).

[33] The market risk capital rules of the OCC, Federal Reserve Board, and FDIC appear respectively at 12 CFR part 3, appendix B; 12 CFR part 208, appendix E and part 225, appendix E, and 12 CFR part 325, appendix C.

[34] *See* 76 FR 1890 (January 11, 2011)(proposing amendments that include revisions to standardized specific risk charges). This proposed rulemaking refers to Basel Accord revisions set forth in "The Application of Basel II to Trading Activities and the Treatment of Double Default Effects", issued by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (IOSCO) in July 2005, and to the "*Revisions to the Basel II Market Risk Framework, Guidelines for Computing Capital for Incremental Risk in the Trading Book*" *and* " *Enhancements to the Basel II Framework*" issued by the Basel Committee on Banking Supervision in July of 2009.

[35] With permission by its federal banking regulator, a bank also may use internal models for calculating specific risk charges. *See* 76 FR 1890, 1893 (January 11, 2011) (discussion of specific risk requirements currently applicable to banks).

[36] *See* 60 FR 38082 (July 25, 1995) (release proposing market risk capital charges) and 61 FR 47358, 47359 (September 6, 1996) (release adopting internal models approach).

rules. Proposed § 23.104 requires the calculation of separate charges for general market risk for positions in equities, debt instruments, commodities and foreign currency (including options with underlying instruments in these categories), which are summed to determine the total general market risk requirement with respect to such positions.

Equities

The standardized measure of market risk for equities applies to direct holdings of equity securities, equity derivatives and off-balance-sheet positions whose market values are directly affected by equity prices. The required charge is the sum of the specific risk charge, calculated as described above, and of the general market risk charge, which is equal to 8.0 percent of the difference between the sum of the firm's long and the sum of the firm's short positions. The net long or short position must be calculated separately for each national market. Thus, for example, a long position in U.S. companies traded on the New York Stock Exchange cannot be netted against a short position in Japanese companies traded on the Tokyo Stock Exchange. Long and short equity positions (including derivatives) in identical equity issues or equity indices in the same market may be netted.

Debt Instruments

Applying the "maturity" method under the Basel standardized approach, on and off-balance-sheet debt positions are distributed among a range of time-bands and zones that are specified by the Basel Accord, which are designed to take into account differences in price sensitivities and interest rate volatilities across various maturities. The time-band into which a position is distributed is determined by its maturity (fixed rate instruments) or the nearest interest rate reset date of the instrument (floating rates). Long positions are treated as positive amounts and short positions are treated as negative amounts. The net long or short position for each time-band is multiplied by the risk weight specified in a table set forth in the Basel Accord.[37] The resulting risk-weighted position represents the amount by which the market value of that debt position is expected to change for a specified movement in interest rates. The sum of all risk-weighted positions (long or short) across all time-bands is the base capital charge for general market risk.

The standardized approach also requires a "time-band disallowance" to address the basis risk that exists between instruments with the same or similar maturities and also the possibly different price movements that may be experienced by different instruments within the same time-band due to the range of maturities (or repricing periods) that may exist within a time-band. To capture this risk, a disallowance of 10 percent is applied to the smaller of the offsetting (long or short) positions within a time-band.[38] This amount would be added to the SD's or MSP's base capital charge.

Additional disallowances address the risk that interest rates along the yield curve are not perfectly correlated and that the risk-weighted positions may not be offset fully. The required disallowances, which apply to the smaller of the offsetting positions, are specified in a table provided under the Basel Accord, and range from 30 percent to 100 percent. The amount of each disallowance varies in size by zone: Greater netting is allowed for positions in different time bands but within the same zone than is allowed for positions that are in different zones. The firm must first determine "intra-zone" disallowance amounts, and then the required "inter-zone" disallowances across zones. An SD's or MSP's general market risk requirement for debt instruments within a given currency would be the sum of (1) the value of its net risk-weighted position and (2) all of its time-band, intra-zone and inter-zone disallowances.[39] The capital charges would be separately computed for each currency in which an SD or MSP has significant positions.

Certain debt securities would not be included in the charges described above, but would instead be subject to the capital treatment under applicable provisions in the SEC's capital regulation at 17 CFR 240. 15c3–1. For example, municipal securities would be subject to capital requirements in the SEC rule.[40] All collateralized debt obligations, asset-backed securities or mortgage-backed securities, except pass-through mortgage-backed securities issued or guaranteed as to principal or interest by the United States or any agency thereof, would also be governed by the SEC rule.[41]

Commodities

The market risk capital requirement for commodities risk applies to holdings or positions taken in commodities, including precious metals, but excluding gold (which is treated as a foreign currency because of its market liquidity). The required charge addresses directional risk, which is the risk that a commodity's spot price will increase or decrease, as well as other important risks such as basis risk, interest rate risk, and forward gap risk.

For purposes of determining the charge, the firm is required to calculate its net position in each commodity on the basis of spot rates. Long and short positions in the same commodity may be netted, and different categories of commodities may be netted if deliverable against each other. Under the "simple" approach under the Basel Accord, the firm's capital charge for directional risk would equal 15 percent of its net position, long or short, in each commodity, and a supplemental charge of 3.0 percent of the gross position in each commodity is added to cover basis, interest rate and forward gap risk.[42]

Foreign Exchange

The market risk capital requirement for foreign exchange covers the risk of holding or taking positions in foreign currencies (including gold). The charge is determined by the firm's net positions in a given currency, including its net spot and forward positions; any guarantees that are certain to be called and likely to be irrecoverable; its net future income and expenses that are not yet accrued, but that are already fully hedged; and any other items

[37] The risk-weights provided in the table approximate the price sensitivity of various instruments. The price sensitivity of zero coupon and low coupon instruments can be materially greater than that of instruments with higher coupons, and the table therefore assigns higher risk weights to low coupon instruments.

[38] For example, if the sum of weighted long positions within a time-band equals $100 million and the sum of weighted short positions equals $90 million, the disallowance for the time-band would be 10 percent of $90 million, or $9 million. Also, if the offsetting amounts (long and short) are equal, the disallowance can be applied to either figure.

[39] The Basel standardized approach includes another maturity ladder approach for interest rate products, the "duration method," which is not included in the proposed Appendix as it requires computations that are less standardized.

[40] This proposed separate treatment is consistent with the SEC's analysis when considering, in 1997, capital provisions similar to the Basel standardized approach for debt instruments. Although the proposed rules were not adopted, the proposing release included pertinent analysis that the market price of municipal securities "depends on tax issues to a much greater extent than other debt instruments," and that the price movements of non-investment grade debt securities "tend to be based primarily on issuer-specific factors." *See* 62 FR 67996 (December 30, 1997).

[41] *Id.* at 68002.

[42] The standardized approach will in certain instances offer more than one measurement technique, of increasing degrees of complexity. The "simplified" method for calculating general market risk charges for positions in commodities has been included in the proposed rules.

representing a profit or loss in foreign currencies. For purposes of the calculation, forward and future positions are converted into the reporting currency at spot market rates.

The standardized approach assumes the same volatility for all currencies and requires an SD or MSP to take capital charge equal to 8.0 percent of the sum of (a) its net position in gold and (b) the greater of the sum of the net short positions or the sum of the net long positions in each foreign currency.

Options

The proposed rule is based on the "delta-plus method" under the Basel standardized approach, which includes capital charges related to the option's *delta* (its price sensitivity relative to price changes in the underlying security, rate, or index); *gamma* (the change in delta for a given change in the underlying); and *vega* (the effect of changes in the volatility of the underlying).[43] The three separate capital charges are computed as follows:

Delta risk charge—This charge is determined by incorporating options positions in the calculations (including specific risk if applicable) that are required elsewhere in the proposed rule for positions in commodities, foreign currencies, equities, and debt instruments. Specifically, options are included as positions equal to the market value of the underlying instrument multiplied by the delta. To determine the delta, and also gamma and vega, sensitivities of the options, the firm will use option pricing models that will be subject to Commission review.

Total gamma risk charge—This charge requires the following steps: (1) For each option, perform a "gamma impact" calculation that is based on a Taylor series expansion and expressed in the Basel Accord as: Gamma impact = $.05 \times \text{Gamma} \times \text{VU}^2$. In this formula, VU refers to the variation of the underlying of the option and is computed by multiplying the market value of the underlying by percentages derived from those specified elsewhere in the proposal for commodities, foreign currencies, equities and debt instruments.[44]

(2) The gamma impact for each option will be positive or negative, and for options on the same underlying, the individual gamma impacts will be summed, resulting in a net gamma impact for each underlying that is either positive or negative.

(3) Net positive gamma impacts amounts are disregarded, and the capital charge equals the absolute value of the sum of all of the net negative gamma impact amounts.

Total vega risk charge—This charge requires the following steps: (1) Sum the vegas for all options on the same underlying, and multiply by a proportional shift in volatility of ± 25 percent; [45] and (2) The total capital charge for vega risk will be the sum of the absolute value of the individual capital charges computed for options positions in the same underlying.

3. Calculations by SDs and MSPs That Are Not Using Internal Models and Are FCMs

The existing capital treatment under § 1.17 for those FCMs that are not approved to use internal models would remain the same under the proposed rules. Thus, SDs and MSPs that are also FCMs and not approved to use internal models for their capital calculations would be required to deduct 100 percent of the receivables associated with their uncleared swaps, except the extent of the market value, minus specified haircuts, of acceptable collateral that secure such receivables. The margin rules that have been proposed may result in fewer unsecured receivables for the FCM's uncleared swaps, especially as the Commission also is proposing to amend § 1.17(c)(2)(ii)(G) to provide that receivables from third-party custodians that arise from initial and/or variation margin deposits associated with bilateral swap transactions pursuant to proposed § 23.158 will be included in the FCM's current assets.

The Commission also is proposing to provide greater clarity and transparency to the market risk haircut charges under § 1.17 for OTC derivatives positions, by adding new paragraphs (iii) and (iv) to § 1.17(c)(5) that would address proprietary OTC swap transactions that are not cleared by or through a clearing organization. The proposal is intended to codify existing guidance provided by the Commission and SEC regarding the computation of capital charges for OTC derivative transactions.

As proposed, § 1.17(c)(5)(iii)(A) would require a capital charge equal to the notional amount of an interest rate swap multiplied by the applicable percentages of the underlying securities specified in SEC Rule 15c3–1(c)(2)(vi)(A)(1), as if such notional amount was the market value of a security issued or guaranteed as to principal or interest by the United States, if the interest rate swap position was not hedged with U.S. Treasury securities of corresponding maturities or matched with offsetting interest rate swap positions with corresponding terms and maturities.[46] Proposed § 1.17(c)(5)(iii)(B) would address uncleared swaps maturing in 10 years or less that are hedged with U.S. Treasury securities of corresponding maturities, or matched with offsetting interest rate swap positions with corresponding terms and maturities, and would require a capital charge of 1 percent of the notional amount of such interest rate swaps. Proposed § 1.17(c)(5)(iii)(C) would require a capital charge of 3 percent of the notional amount of the interest rate swap, if the swap was hedged with U.S. Treasury securities of corresponding maturities or matched with offsetting interest rate swap positions with corresponding terms and maturities, and such interest rate swap positions were maturing in more than10 years.

Proposed § 1.17(c)(5)(iv) addresses the capital charges on proprietary OTC swap positions in credit default swaps, equity swaps, or commodity swaps that are not cleared by or through a clearing organization. Credit default swaps that are not hedged by the same securities underlying the swap are subject to a capital charge computed by multiplying the notional principal amount of the

[43] Two other methods under the Basel standardized approach for options are not included in the Appendix, as the "simplified" method applies only to purchased options, and the "scenario" method incorporates measurements that must meet the same qualitative requirements applicable to the internal models approach. *See* 60 FR at 38091 (discussing restrictions on use of simplified and scenario methods).

[44] Applying the required percentages, VU would be determined for a commodity option by multiplying the market value of the underlying commodity by 15 percent; for a foreign currency by multiplying the market value of the underlying by 8 percent; for an equity or index by multiplying the market value of the underlying by 12 percent or 8 percent respectively, and for options on debt instruments or interest rates, the market value of the underlying multiplied by the risk weights for the appropriate time band as derived from Table A. The text of the rules for the gamma risk charge simplifies the required computation for options with debt instruments or interest rates as the underlying, by providing a table of specific risks weights to be used.

[45] Vega is quoted to show the theoretical price change for every 1 percentage point change in implied volatility. Assuming a European short call option with volatility of 20 percent, for purposes of the required calculation the volatility has to be increased by a relative shift of 25 percent (only an increase in volatility carries a risk of loss for a short call option.) Thus, in this example, the vega capital charge should be calculated on the basis of a change in volatility of 5 percentage points from 20 percent to 25 percent. Assuming vega in this example equals 168, a 1 percent increase in volatility increases the value of the option by 1.68. Accordingly, the capital charge for vega risk is calculated as follows: $5 \times 1.68 = 8.4$

[46] SEC Rule 15c3–1(c)(2)(vi)(A)(1) lists haircut percentages between 0 percent and 6 percent based upon the time to maturity of the security.

swap by the applicable percentages as determined by the underlying securities under SEC Rule 15c3–1(c)(2)(vi) and taking into account the remaining maturity of the swap agreement.

Equity swaps would be subject to a capital charge equal to 15 percent of the net notional principal amount of the swap transaction. Commodity swaps would be subject to a capital charge equal to 20 percent of the net market value of the notional amount of the commodities underlying the swap transaction.

D. Failure To Meet Minimum Capital Requirements

Regulation 1.17(a)(4) currently provides that any FCM that fails to meet, or is unable to demonstrate compliance with, the minimum capital requirement must transfer all customer accounts and immediately cease doing business as an FCM until it is capable of demonstrating compliance with the capital requirements. The FCM may continue to trade for liquidation purposes only unless the Commission or the FCM's designated self-regulatory organization (DSRO) provides otherwise.[47] The Commission and the FCM's DSRO also have the authority to grant the FCM up to a maximum of 10 business days to come back into compliance with the capital regulations without having to transfer customer accounts if the FCM can immediately demonstrate the capability of achieving capital compliance.

The Commission is not proposing to amend § 1.17(a)(4). Accordingly, if an FCM that also is registered as an SD or MSP fails to maintain the minimum level of capital, it would have to cease operating as an FCM and transfer the customer futures and cleared swap accounts that it carries to another FCM. The FCM also could request that the Commission or DSRO grant the firm up to 10 business days to come back into compliance with the minimum capital requirements if the FCM could demonstrate an immediate plan to achieve compliance.

The Commission recognizes that an FCM that is an SD or MSP and has open uncleared bilateral swap transactions cannot transfer the uncleared bilateral swap transactions in a manner similar to customer futures and cleared swap transactions. In such situations, the agreements between the SD or MSP and its counterparties should dictate the process. As previously proposed by the Commission, each SD or MSP would be required to establish written policies and procedures reasonably designed to ensure that each SD or MSP and its counterparties have agreed in writing to all of the terms governing their swap trading relationship. The Commission further has proposed that the swap trading relationship documentation include a written agreement by the parties on terms relating to events of default or other termination events, and dispute resolution procedures. Therefore, the SD's or MSP's written agreements with its counterparties should address the possible undercapitalization of the SD or MSP and the parties' rights in such a situation.[48]

Proposed § 23.105(a) requires an SD or MSP to provide the Commission with immediate notice if the SD or MSP fails to maintain compliance with the minimum capital requirements. FCMs also are required to provide the Commission with immediate notice under § 1.12(a). Upon receipt of an undercapitalization notice, the Commission would engage the SD or MSP to assess the situation and to determine whether the SD or MSP would be able to take reasonable actions to bring itself back into compliance with the minimum capital requirements. The Commission would further assess what other actions were necessary depending on the facts and circumstance of each situation, including the need for providing immediate notice to the SD's or MSP's swap counterparties.

E. SD and MSP Financial Reporting Requirements

1. SD and MSP Financial Statement Requirements

Section 4s(f)(1)(A) of the CEA, as amended by section 731 of the Dodd-Frank Act, expressly requires each registered SD and MSP to make such reports as are required by Commission rule or regulation regarding the SD's or MSP's financial condition. The Commission is proposing new § 23.106, which would require certain SDs and MSPs to file monthly unaudited financial statements and annual audited financial statements with the Commission and with any registered futures association of which they are members.

Proposed § 23.106 would apply to SDs and MSPs, except any SDs or MSPs that are subject to the capital requirements of a prudential regulator, or designated by the Financial Stability Oversight Council as a SIFI. SDs and MSPs that are subject to regulation by a prudential regulator would comply with the applicable financial reporting obligations imposed by such prudential regulator. SDs and MSPs that are designated as SIFIs would comply with any financial reporting obligations imposed by the Federal Reserve Board. Registered SDs or MSPs that are subject to prudential regulation or designated as SIFIs, however, would be required pursuant to proposed § 23.105(d) to provide the Commission with copies of their capital computations and supporting documentation upon the Commission's request. In addition, SDs and MSPs that are required to register with the Commission as FCMs would not be required to file financial reports under § 23.106, and would continue to comply with the FCM financial reporting obligations set forth in § 1.10 of the Commission's regulations.

The proposed financial statements under part 23 would include a statement of financial condition; a statement of income or loss; a statement of cash flows; and a statement of changes in stockholders', members', partners', or sole proprietor's equity. The financial statements also would include a schedule reconciling the firm's equity, as set forth in the statement of financial condition, to the firm's regulatory capital by detailing any goodwill or other intangible assets that are required to be deducted from the SD's or MSP's equity in order to compute its net tangible equity as required under proposed § 23.101. The schedule would further disclose the firm's minimum required capital under § 23.101 as of the end of the month or end of its fiscal year, as applicable, and the amount of regulatory capital it held at such date.

The proposed financial statements would be required to be prepared in accordance with generally accepted accounting principles as established in the United States, using the English language, and in U.S dollars. The unaudited financial statements would be required to be filed within 17 business days of the end of each month and the annual audited financial statements would be required to be filed within 90 days of the end of the SD's or MSP's fiscal year.

Proposed § 23.106 also would authorize the Commission to require a SD or MSP that was not subject to regulation by a prudential regulator to

[47] The term "designated self-regulatory organization" is defined at § 1.3(ff) as the self-regulatory organization of an FCM that has been delegated the responsibility of reviewing such FCM's compliance with minimum financial requirements and financial reports under a plan approved by the Commission pursuant to § 1.52.

[48] *See* 76 FR 6715 (Feb. 8, 2011). Proposed § 23.504 would require each SD or MSP to execute with its counterparties swap trading relationship documentation that address, among other things, the events of default or other termination events.

file with the Commission additional financial or operational information, and to prepare and to keep current ledgers or other similar records which show or summarize each transaction affecting the SD's or MSP's asset, liability, income, expense and capital accounts. These accounts would be required to be classified in accordance with United States generally accepted accounting principles. Proposed § 23.106 also would provide that the comprehensive data records supporting the information contained in the SD's or MSP's unaudited and annual audited financial reports must be maintained and retained for a period of five years pursuant to § 1.31 of the Commission's regulations.

2. SD and MSP Notice Filing Requirements

Proposed § 23.105 would require SDs and MSPs to provide the Commission, and the registered futures association of which the SDs or MSPs are members, with written notice in the event of certain enumerated financial or operational issues. The proposal is intended to provide the Commission and the appropriate registered futures association with timely notice of potentially adverse financial or operational issues that may warrant immediate attention and ongoing surveillance. The proposed notice requirements are comparable to the notice requirements currently existing for FCMs under § 1.12 of the Commission's regulations. Proposed § 23.105 would not be applicable to SDs and MSPs that are registered as FCMs. Such SDs and MSPs would be subject to the FCM notice requirements set forth in § 1.12 and, as noted above, such requirements are comparable to the proposed SD and MSP notice requirements set forth in § 23.105.

Proposed § 23.105 also would not be applicable to SDs or MSPs that are subject to the capital requirements of a prudential regulator, with the exception of two provisions that are discussed below. SDs and MSPs that are subject to capital requirements imposed by a prudential regulator would be subject to the applicable financial surveillance program of its prudential regulator. The first exception is the proposed requirement in § 23.105(c) that a SD or MSP that is subject to the capital rules of a prudential regulator file notice with the Commission and with a registered futures association if the SD or MSP fails to maintain compliance with the minimum capital requirements established by its prudential regulator. The second exception is set forth in proposed § 23.105(e) which requires an SD or MSP to provide the Commission with notice if it fails to maintain current books and records.

While the prudential regulator will be assessing such an SD's or MSP's financial condition, the Commission believes that notice of a CFTC registrant's failure to maintain compliance with applicable minimum capital requirements is critical information that may impact the Commission's assessment and monitoring of the SD's or MSP's ongoing compliance with applicable non-capital CFTC regulations and the SD's or MSP's potential adverse impact on counterparties, including other Commission registered SDs and MSPs.

The proposed notice provisions would require a SD or MSP to give telephonic notice to the Commission, followed by a written notice, whenever it knows or should know that the firm does not maintain tangible net equity in excess of its minimum requirement under § 23.101. The SD or MSP also would be required to file documentation containing a calculation of its current tangible net equity with its notice of undercapitalization.

Proposed § 23.105 also would require a SD or MSP to file a written notice with the Commission whenever its tangible net equity fails to exceed 110 percent of its minimum tangible net equity requirement as computed under § 23.101. The SD or MSP would be required to file the notice within 24 hours of failing to maintain tangible net equity at a level that is 110 percent or more above its minimum tangible net equity requirement. Proposed § 23.105 also would require a registered SD or MSP to provide written notice of its failure to maintain current books and records, or of a substantial reduction in capital as previously reported to the Commission.

E. Proposed Financial Reporting and Other Amendments to FCM Regulations Relating to Customer Cleared Swap Transactions

The Commission issued in December 2010 an advanced notice of proposed rulemaking seeking comment on possible models to implement section 4d(f)(2) of the CEA, as added by section 724 of the Dodd-Frank Act, which provides that funds deposited by customers to margin a cleared swap transaction shall not be commingled with the funds of the FCM or used to margin, guarantee or secure the positions of any other customer other than the customer that deposited the funds.[49] The Commission is proposing in this release amendments to certain FCM financial reporting requirements in §§ 1.10, 1.12, and 1.16 of the Commission's regulations to address the segregation of swap customers' funds. The proposed financial reporting requirements are similar to the current financial reporting requirements that FCMs must meet with respect to the segregation of customer funds deposited under section 4d(a)(2) of the CEA as margin for futures contracts and options on futures contracts executed on a designated contract market. The Commission is further proposing to amend § 1.17 to provide that certain capital charges relating to undermargined customer and noncustomer accounts extends to undermargined customer and noncustomer accounts that carry cleared swap transactions.

1. Financial Reporting Requirements in § 1.10

Regulation 1.10 currently requires each FCM to prepare and to file unaudited financial condition reports, Form 1–FR–FCM, within 17 business days of the close of business each month. The Form 1–FR–FCM is required to be filed with the Commission and with the FCM's DSRO. An FCM also is required to file a Form 1–FR–FCM audited by an independent public accountant as of the end of the FCM's fiscal year. The audited financial Form 1–FR–FCM is required to be filed with the Commission and with the FCM's DSRO organization within 90 calendar days of the date of the FCM's fiscal year end.

Regulation 1.10(d) provides that each unaudited and audited Form 1–FR–FCM must include: a Statement of Financial Condition; a Statement of the Computation of Minimum Capital Requirements; a Statement of Income (Loss); a Statement of Changes in Ownership Equity; a Statement of Changes in Liabilities Subordinated to Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement; a Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; and a Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Options Customers Pursuant to § 30.7.

The Commission is proposing to amend §§ 1.10(d)(1) and (2) to include a new Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under 4d(f) of the CEA in both the unaudited monthly Form 1–FR–FCM and the audited annual Form

[49] 75 FR 75162 (Dec. 2, 2010).

1–FR–FCM, respectively. This Statement is comparable to the statement required for the segregation of customer funds for trading on designated contract markets, the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges. The proposed swap segregation statement is intended to provide an FCM that carries accounts for customers that maintain cleared swap positions with a schedule to document and to demonstrate its compliance with its obligation to treat, and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a swap cleared by or through a derivates clearing organization (including money, securities, or property accruing to swap customers as the result of such a swap) as belonging to the FCM's swap customers as required by section 4d of the CEA as amended by section 724 of the Dodd-Frank Act.

Pursuant to the proposal, each FCM would be required to include the Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under 4d(f) of the CEA in both its unaudited monthly financial Form 1–FR–FCM filings and its annual audited Form 1–FR–FCM filings. In addition, each FCM would be required to include a reconciliation of any material reconciling items between the Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under 4d(f) of the CEA contained in the audited annual Form 1–FR–FCM and the corresponding unaudited monthly financial Form 1–FR–FCM filed as of the FCM's year end date, or include a statement that there were no material reconciling items.

The Commission also is proposing to amend § 1.10(g)(2)(ii) to provide that an FCM's Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under 4d(f) of the CEA will not be treated as exempt from mandatory public disclosure under the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of Chapter I of the Commission's regulations. This proposed amendment would treat the public disclosure of an FCM's financial information regarding the holding of funds for customers' cleared swap transactions in a manner that is consistent with the public disclosure of information regarding the segregation of customer funds for trading on U.S. commodity exchanges, and regarding the securing of customer funds for trading on foreign boards of trade pursuant to § 30.7 of the Commission's regulations.

The Commission is further proposing a technical amendment to § 1.10(c)(1), which directs an FCM, and other registrants, to file the reports and other information required by § 1.10 with Commission's Regional Office with jurisdiction over the registrant's principal place of business. Commission § 140.02 establishes the jurisdiction of each Regional Office over filing requirements of registrants based upon the geographic location of the principal business office of the registrants. In order to clarify where a registrant should file required financial information with the Commission, the Commission proposes to amend § 1.10(c) to include a reference to the geographic listing in § 140.02 of the Commission's regulations.

Except for the technical amendment described above, the other proposed amendments implementing reporting requirements for funds of cleared swap customers would not be adopted or effective unless the Commission adopts, after issuing proposed rules for comment, regulations establishing requirements for collateral posted by cleared swap customers under section 4d(f) of the CEA.

2. Audited Financial Statement Requirements in § 1.16

The Commission is proposing to amend § 1.16 of the Commission's regulations. Regulation 1.16 sets forth the qualifications that an independent public accountant must meet to be qualified to conduct the annual examinations of an FCM as required by § 1.10(b)(1)(ii), and establishes the minimum audit objectives of the independent accountant's examination of an FCM.

Regulation 1.16(c)(2) provides that the accountant's report on the audit of an FCM must state whether the audit was made in accordance with generally accepted auditing standards and must designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted and the reason for the omission of such procedures. Regulation 1.16(c)(3) further provides that the accountant's report must clearly state the opinion of the accountant with respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein.

Regulation 1.16(d) sets forth the required audit objective of the accountant's examination of the financial statements of an FCM and provides, in relevant part, that the audit must be made in accordance with generally accepted auditing standards and must include a review and appropriate tests of the accounting systems, the internal accounting controls, and the procedures for safeguarding customer and firm assets in accordance with the CEA and Commission regulations, since the last examination date. The scope of the audit and review of the FCM's accounting systems, the internal accounting controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the dates of the examination in (1) The accounting systems, (2) the internal accounting controls, and (3) the procedures for safeguarding customer and firm assets (including the segregation requirements of section 4d(a)(2) of the CEA and Commission regulations, and the secured amount requirements of the CEA and part 30 of the Commission's regulations) will be discovered. Regulation 1.16(d) further provides that as specified objectives the audit must include reviews of the practices and procedures followed by the FCM in making daily computations of the segregation requirements of section 4d(a)(2) of the CEA and the secured amount requirements of part 30 of the Commission's regulations.

The proposed amendments would revise § 1.16 to include the proposed new Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under 4d(f) of the CEA within the explicit audit scope of the examination of an FCM. Specifically, the Commission is proposing to amend the term "customer" as defined in § 1.16(a)(4) to include an FCM's swap customers that engage in cleared swap transactions. The proposed amendment would bring cleared swap positions carried in swap customers' accounts explicitly within the scope of the accountant's audit objectives, as set forth in § 1.16(d), which includes the review and appropriate testing of the accounting systems, the internal accounting control, and the procedures for safeguarding customer and firm assets.

The Commission also proposes to amend § 1.16(d)(1) to explicitly provide that the scope of the independent accountant's review of the accounting systems, internal accounting controls, and procedures for safeguarding customer assets must be sufficient to provide reasonable assurance that any

material inadequacy existing as of the date of the examination in (1) the accounting system, (2) the internal accounting controls, and (3) the procedures for safeguarding customer and firms assets will be discovered includes the cleared swap segregation requirements as set forth in section 4d(f) of the CEA. The Commission further proposes to amend § 1.16(d)(2) to include as a material inadequacy in the accounting systems, internal accounting controls, and the procedures for the safeguarding customer and firm assets that are required to be reported to the Commission any conditions which contribute substantially to or, if appropriate corrective action is not taken, could reasonably be expected to result in a violation of the requirement to segregate swap customers' funds.

The proposed amendments to § 1.16 would not be adopted or effective unless the Commission adopts, after issuing proposed rules for comment, regulations establishing segregation requirements for collateral posted by cleared swap customers under section 4d(f) of the CEA. As previously noted, the Commission published an advanced notice of proposed rulemaking on this topic on December 2, 2010.

3. Early Warning Requirements in § 1.12

Regulation 1.12 requires an FCM to provide notice to the Commission and to the FCM's DSRO of certain material financial or operational events. The self-reporting of these financial and operational events by an FCM is a key to the Commission's and self-regulatory organizations' financial surveillance oversight programs as such notices may lead to the discovery of accounting, recordkeeping, risk management, or other regulatory failures that require prompt attention to safeguard customer funds and to protect the clearing system.

Regulation 1.12(b) is referred to as the "early warning capital provisions" and currently requires an FCM to file written notice with the Commission and with its DSRO whenever its adjusted net capital is less than: (1) 150 percent of the minimum dollar amount of adjusted net capital required by § 1.17(a)(1)(i)(A); (2) 150 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member (except if the registered futures association has adopted a margin-based capital rule, then the FCM is required to file a written notice if its adjusted net capital is less than 110 percent of its minimum adjusted net capital requirement as computed under the registered futures association's margin-based capital requirement); or (3) 110 percent of the FCM's margin-based capital requirement as computed under § 1.17(a)(1)(i)(B). An FCM that also is registered with the SEC as a broker or dealer is required to provide the Commission with written notice whenever it fails to maintain net capital (as defined in SEC Rule 15c3–1) in an amount that exceeds the "early warning level" set forth in SEC Rule 17a–11(c). The early warning capital provisions are intended to provide the Commission and the FCM's DSRO with prompt notice of potential adverse financial or operational issues that may impact the FCM's ability to meet its obligations to its customers and the clearing system, and provide an opportunity for Commission and DSRO staff to review the financial condition of an FCM that does not maintain a significant amount of excess adjusted net capital prior to the firm falling under the minimum net capital requirement.

The Commission is proposing to amend § 1.12(b) by adding a new paragraph (b)(5) to require any FCM that also is registered with the SEC as a SSD or a MSSP to file a notice with the Commission if the SSD or MSSP fails to maintain net capital above the minimum "early warning level" established by rules or regulations of the SEC. The proposed new paragraph (b)(5) would provide the Commission and the FCM's DSRO with an opportunity to review the financial condition of an FCM and, if necessary, to assess possible courses of regulatory action to protect customer funds and to review potential financial risk presented by the FCM to the clearing system.

The Commission also is proposing to amend § 1.12(f)(4). Regulation 1.12(f)(4) requires an FCM to provide immediate notice by telephone communication, followed by immediate written confirmation, whenever any commodity futures, options, cleared swaps, or other Commission regulated account that the FCM carries is subject to a margin call, or a call for other deposits required by the FCM, that exceeds the FCM's excess adjusted net capital determined under § 1.17, and the call for additional deposits has not been answered by the close of business on the day following the issuance of the call.

The Commission intends for all of the notice provisions of § 1.12 to apply, as applicable, to FCMs that carry swap customer accounts. The Commission, however, believes it is necessary to amend § 1.12(f)(4) due to the reference in the regulation to "commodity interest" accounts. The term "commodity interest" is defined in § 1.3(yy) as any contract for the purchase or sale of a commodity for future delivery and any contract, agreement, or transaction submitted under section 4c of the CEA. To avoid any confusion and to ensure that an FCM provides the Commission and its self-regulatory organizations with appropriate early warning notice, the Commission is proposing to amend § 1.12(f)(4) to require notice of a failure of the owner of any commodity futures, option, swap, or other Commission regulated account carried by the FCM to meet a margin call that exceeds the FCM's excess adjusted net capital. The proposed amendment is intended to ensure that an FCM is required to file a written notice if a customer account containing cleared swap transactions fails to meet a margin call that exceeds the FCM's excess adjusted net capital.

The Commission also is proposing to amend § 1.12(h) to require an FCM to provide the Commission and its DSRO with immediate notice by telephone, confirmed immediately in writing, if the amount of funds on deposit in accounts segregated for the benefit of the FCM's swap customers is less than the amount that the FCM is required to hold in such accounts. The proposed amendment to § 1.12(h) would impose an obligation upon the FCM that is consistent with an FCM's current obligation to provide immediate telephone notice, confirmed by writing, whenever the FCM fails to maintain the amount of funds in customer segregated or secured accounts as required by § 1.20 and § 30.7, respectively.

4. Amendments to 1.17 for FCMs With Cleared Swaps Customers

The Commission proposes to amend Commission regulation 1.17(c)(2)(i) by adding references to cleared swap customers to this regulation, which currently provides that FCMs must exclude from current assets any unsecured commodity futures and options account (as amended, this would include cleared swaps customers and other Commission regulated accounts) containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers', and proprietary accounts, which are the subject of calls for margin or other required deposits may be included in current assets until the close of business on the business day following the date on which such deficit or debit ledger balance originated providing that the account had timely satisfied, through the deposit of new funds, the previous day's debit or deficits, if any, in its

entirety. The Commission is also proposing to add similar references to cleared swap accounts of customers in §§ 1.17(c)(5)(viii) and (ix), which requires certain capital charges when the accounts of customer or noncustomers are undermargined.

The Commission also is proposing to amend provisions in § 1.17(c)(5)(v) that require an FCM to incur a capital charge not only on its proprietary securities included in the FCM's calculation of adjusted net capital, but also for securities held in customer segregated accounts when such securities were not deposited in segregation by a specific customer (i.e., the securities were purchased with cash held in the customer segregated accounts). The purpose of both of these capital requirements is to ensure that the FCM maintains a capital cushion in order to cover potential decreases in the value of the securities. The proposed rule would further require the FCM to incur a capital charge for any securities purchased by the FCM using funds belonging to the FCM's customers and held in the secured accounts for customers trading on foreign markets pursuant to § 30.7 or in segregated accounts for cleared swap customers pursuant to section 4d(f) of the CEA.

C. Request for Comment

The Commission requests comment on all aspects of the proposed capital and financial reporting regulations. In particular, the Commission request comment on the following:

(1) The Commission's capital proposal for SDs and MSPs includes a minimum dollar level of $20 million. A non-bank SD or MSP that is part of a U.S. bank holding company would be required to maintain a minimum of $20 million of Tier 1 capital as measured under the capital rules of the Federal Reserve Board. An SD or MSP that also is registered as an FCM would be required to maintain a minimum of $20 million of adjusted net capital as defined under § 1.17. In addition, an SD or MSP that is not part of a U.S. bank holding company or registered as an FCM would be required to maintain a minimum of $20 million of tangible net equity, plus the amount of the SD's or MSP's market risk exposure and OTC counterparty credit risk exposure.

The Commission requests comment on the amount of the proposed minimum dollar amount of regulatory capital. Should the minimum dollar amount of capital be set at a higher or lower level? Is a consistent $20 million of minimum regulatory capital appropriate for all SDs and MSPs?

(2) The Commission is proposing in § 23.101 to incorporate bank capital requirements into the CFTC capital requirements by requiring non-bank SDs and MSPs that are part of a U.S. bank holding company to meet bank capital requirements. The Commission requests comment on the appropriateness of the proposed incorporation of banking capital regulations in the terms of § 23.101 for such SDs or MSPs.

(3) The Commission is proposing in § 23.101 to establish a regulatory capital requirement that is based upon tangible net equity if the SD or MSP is not: (1) An FCM; (2) part of a U.S. bank holding company; or (3) designated a SIFI. Proposed § 23.102 provides that tangible net equity shall be determined under generally accepted accounting principles and shall exclude goodwill and other intangible assets. The Commission requests comment on the proposed definition of tangible net equity. Should all intangible assets be excluded?

(4) The Commission requests comment on the appropriateness of establishing a minimum regulatory capital requirement based upon tangible net equity for all SDs and MSPs that are not also registered as FCMs, part of U.S. bank holding companies, or designated as SIFIs. Specifically, is the tangible net equity method appropriate for SDs and MSPs that are primarily engaged in non-financial operations? Is the tangible net equity method appropriate for SDs and MSPs that are primarily engaged in financial operations? Should minimum regulatory capital requirements be established under a different method for SDs and MSPs that are primarily financial or trading entities, such as funds or trading firms? Should the Commission impose additional capital or alternative capital requirements on financial firms that qualify to use the tangible net equity approach? What additional or alternative capital requirements would be appropriate for such firms?

(5) The proposed tangible net equity capital computation does not require an SD or MSP to maintain the same level of highly liquid assets as the Commission's current capital requirement for FCMs. Specifically, the tangible net equity capital requirement would allow an SD or MSP to include fixed assets and other illiquid assets in meeting its regulatory capital requirement. Should the capital requirement for the tangible net equity method include a liquidity component that would effectively require an SD or MSP to hold a defined amount of highly liquid assets? What factors should the Commission consider in adopting a liquidity requirement?

(6) One possible approach to a minimum liquidity requirement is to require an SD or MSP to hold unencumbered liquid assets equal to the sum of the total amount of initial margin that the SD or MSP would have to post with a counterparty for all uncleared swap transactions and the total amount of any unpaid variation margin that the SD or MSP owes to any counterparty. Liquid assets that could qualify for purposes of the liquidity requirement could be limited to cash, obligations guaranteed by the U.S., and obligations of government sponsored entities. Such assets could be part of the general operating assets of the SD or MSP and would not have to be held or "segregated" in any special account by the SD or MSP. Assets posted by the SD or MSP with custodians as margin on uncleared swap transactions could be included in meeting the liquidity requirement. The qualifying liquid assets also could be subject to market value haircuts set forth in the proposed margin rule § 23.157(c). The Commission request comment on this approach to the computation of a liquidity requirement. If the Commission were to adopt such a liquidity requirement, would it be appropriate to incorporate minimum margin thresholds that would have to be exceeded before the SD or MSP was subject to the liquidity requirement? For example, should the Commission consider a rule that would impose a liquidity requirement only if the SD's or MSP's initial and variation margin obligations on uncleared swaps exceeded a minimum threshold? How would such thresholds be determined? What are the appropriate market value haircuts that should be imposed?

(7) The Commission is proposing to amend § 1.17 to specify capital charges for uncleared swap transactions held by an FCM. The Commission request comment on the appropriateness of the proposed calculations. Furthermore, the Commission request comment on viable alternative methods to compute capital charges for uncleared swap positions. Specifically, the Commission requests comment on whether capital charges should be based upon the margin calculations that would be required to be conducted under Part 23 of the proposed regulations.

(8) SDs and MSPs that also are registered as FCMs are required under § 1.17(c)(2)(ii) to exclude unsecured receivables from counterparties to OTC transactions in determining their adjusted net capital under § 1.17. Certain SDs or MSPs that also are

registered as FCMs, however, may elect to use internal models to compute credit risk charges under § 1.17(c)(6) if they comply with the Commission's requirements set forth in § 1.17(c)(6) and have previously obtained an order from the SEC approving the use of such models for purpose of computing regulatory capital. In addition, proposed § 1.17(c)(7) would permit SDs and MSPs that also are registered FCMs to seek Commission approval under § 23.103 to use internal models to compute credit risk charges for OTC derivatives transactions in lieu of the current 100 percent capital charge for unsecured receivables.

The Commission seeks comment on the appropriateness of allowing SDs and MSPs that also are registered as FCMs and have received approval to use internal models to compute their capital requirements to use such models to reduce the 100 percent capital charge for unsecured receivables arising from uncleared OTC swap transactions. The Commission requests comment on this issue as it is concerned that SDs and MSPs may have significant unsecured receivables for uncleared swap transactions that are not subject to variation margin requirements (e.g., bilateral swap positions entered into prior to the effective date of the Dodd-Frank Act). If such SDs and MSPs also were to register as FCMs, the unsecured receivables could have a significant impact on the financial condition of the FCMs and adversely impact the FCMs' customers if the debtor were to default.

(9) The Commission solicits comment on all of the proposed rules related to the use of internal models for computing market risk and counterparty credit risk for capital purposes. Specifically, comment is requested regarding what resources, expertise, and capacity SDs and MSPs ought to have in order to be approved to use internal models.

(10) The Commission solicits comment regarding whether it is appropriate to permit SDs and MSPs to use internal models for computing market risk and counterparty credit risk charges for capital purposes if such models have been approved by a foreign regulatory authority and are subject to periodic assessment by such foreign regulatory authority. What criteria should the Commission consider in assessing whether to approve or to accept a model approved by a foreign regulatory authority?

(11) The Commission previously has proposed regulations that require each SD and MSP to promptly report to the Commission any swap valuation dispute not resolved within one business day if the counterparty is SD or MSP, or five business days if the counterparty is not an SD or MSP.[50] The Commission requests comment on whether it is appropriate to require an SD or MSP to take a capital charge for the amount of any valuation dispute. Should the SD or MSP take a capital charge immediately upon learning of a valuation dispute, or should the capital charge be taken after one business day or five business days depending on whether the counterparty is an SD/MSP or a non-SD/MSP, respectively? What role should margin deposits have on the calculation of the capital charge? Are there any other issues that the Commission should consider?

(12) What are the costs to counterparties resulting from the capital requirements being proposed by the Commission?

(13) FCMs currently file monthly unaudited financial statements with the Commission, and the Commission is proposing to extend this monthly filing requirement to SDs and MSPs. The Commission seeks comment regarding the frequency of the filing of SD and MSP unaudited financial statements. Specifically, what challenges and costs are associated with monthly financial statement filings? Would the Commission receive adequate financial information from SDs and MSPs if they filed on a quarterly basis? Are there other financial statements or schedules other than, or in addition to, the proposed statements and schedules that the Commission should require from SDs and MSPs?

(14) The Commission is proposing in § 23.106(i) to make available to the public regulatory capital information provided by each SD and MSP in their financial statement filings with the Commission. Specifically, the Commission would make publicly available for each SD or MSP its minimum regulatory capital requirement, the amount of its regulatory capital, and any excess or deficiency in its regulatory capital. The disclosure of the regulatory capital information of SDs and MSPs is consistent with the disclosure of FCM financial information.

III. Conforming Amendments to Delegated Authority Provisions

Commission §§ 1.10, 1.12, and 1.17 reserve certain functions to the Commission, the greater part of which the Commission has delegated to the Director of the Division of Clearing and Intermediary Oversight through the provisions of § 140.91 of the Commission's regulations. The Commission proposes to amend § 140.91 to provide similar delegations with respect to functions reserved to the Commission in Part 23.

Proposed § 23.101(c) would require an SD or MSP to be in compliance with the minimum regulatory capital requirements at all times and to be able to demonstrate such compliance to the Commission at any time. Proposed § 23.103(d) would require an SD or MSP, upon the request of the Commission, to provide the Commission with additional information regarding its internal models used to compute its market risk exposure requirement and OTC derivatives credit risk requirement. Proposed § 23.105(a)(2) would require an SD or MSP to provide the Commission with immediate notification if the SD or MSP failed to maintain compliance with the minimum regulatory capital requirements, and further authorizes the Commission to request financial condition reporting and other financial information from the SD or MSP. Proposed § 23.105(d) authorizes the Commission to direct an SD or MSP that is subject to capital rules established by a prudential regulator, or has been designated a systemically important financial institution by the Financial Stability Oversight Council and is subject to capital requirements imposed by the Board of Governors of the Federal Reserve System to file with the Commission copies of its capital computations for any periods of time specified by the Commission.

The Commission is proposing to amend § 140.91 to delegate to the Director of the Division of Clearing and Intermediary Oversight, or the Director's designee, the authority reserved to the Commission under proposed §§ 23.101(c), 23.103(d), and 23.105(a)(2) and (d). The delegation of such functions to staff of the Division of Clearing and Intermediary Oversight is necessary for the effective oversight of SDs and MSPs compliance with minimum financial and related reporting requirements. The delegation of authority also is comparable to the authorities currently delegated to staff of Division of Clearing and Intermediary Oversight under § 140.91 regarding the supervision of FCMs compliance with minimum financial requirements.

The following provisions relating to margin requirements are also proposed to be included in Part 140, in order to provide within Part 140 a complete listing of the functions reserved to the Commission under Subpart E that are

[50] *See,* proposed § 23.504(e) at 76 FR 6715 (Feb. 8, 2011).

proposed to be delegated to the Director of the Division of Clearing and Intermediary Oversight. As proposed in this release, Part 140 would include delegations for the Commission's ability under proposed § 23.155(b)(4)(ii) and (iii), with respect to initial margin, and under § 23.155(c)(1) and (2) with respect to variation margin, to require at any time that a covered swap entity ("CSE") provide further data or analysis concerning a model or methodology used to calculate margin, or to modify a model or methodology to address potential vulnerabilities. A similar delegation is provided for the Commission's ability under § 23.155(c)(4) to require at any time that the CSE post or collect additional margin because of additional risk posed by a particular product, or because of additional risk posed by a particular party to the swap.

The Commission also is proposing in this release to delegate authority with respect to the Commission's recently proposed § 23.157(d), which would authorize the Commission to take the following actions regarding margin assets: (i) Require a CSE to provide further data or analysis concerning any margin asset posted or received; (ii) require a CSE to replace a margin asset posted to a counterparty with a different margin asset to address potential risks posed by the asset; (iii) require a CSE to require a counterparty that is an SD, MSP, or a financial entity to replace a margin asset posted with the CSE with a different margin asset to address potential risks posed by the asset; (iv) require a CSE to provide further data or analysis concerning margin haircuts; or (v) require a CSE to modify a margin haircut applied to an asset received from an SD, MSP, or a financial entity to address potential risks posed by the asset.

Finally, under proposed § 23.158(c), the Commission may at any time require a CSE to provide further data or analysis concerning any custodian holding collateral collected by the CSE. Further, the Commission may at any time require a CSE participant to move assets held on behalf of a counterparty to another custodian to address risks posed by the original custodian. The Commission is proposing also to include delegations in Part 140 with respect to these functions reserved to the Commission under § 23.158(c). Each of the proposed delegations would be to the Director of the Division of Clearing and Intermediary Oversight, with the concurrence of General Counsel. The Commission requests comment on each of the proposed amendments to § 140.91 described in this release.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [51] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and if so, provide a regulatory flexibility analysis respecting the impact. The Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[52] SDs and MSPs are new categories of registrant. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA.

The Commission previously has determined that FCMs should not be considered to be small entities for purposes of the RFA. The Commission's determination was based in part upon their obligation to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[53] Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. The Commission is required to exempt from designation entities that engage in a *de minimis* level of swap dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for this and future rulemakings, the Commission is hereby proposing that SDs not be considered "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.

The Commission also has previously determined that large traders are not "small entities" for RFA purposes.[54] The Commission considered the size of a trader's position to be the only appropriate test for purposes of large trader reporting.[55] MSPs maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this and future rulemakings, the Commission is hereby proposing that MSPs not be considered "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

The Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating capital requirements of SDs and MSPs into the existing regulatory capital frameworks. In so doing, the Commission has attempted to formulate requirements in the manner that is consistent with the public interest and existing regulatory requirements. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [56] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking, as well as the proposed rulemaking on margin requirements for uncleared swaps, which was first published in the **Federal Register** on April 28, 2011, and is subject to a comment period that is being extended to correspond with the comment period for these proposed capital requirements, contain collections of information for which the Commission has previously sought or received control number from the Office of Management and Budget ("OMB"). This proposed rulemaking, as well as the proposed rulemaking on margin requirements for uncleared swaps, also would result in new mandatory collections of information within the meaning of the PRA. Therefore, pursuant to the PRA, the Commission is submitting a PRA proposal for both the capital and the margin rules, in the form of an amendment to the Commission's existing collection under OMB Control Number 3038–0024, to OMB for its review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

1. Collections of Information

a. Schedule to Form 1–FR–FCM

The Commission has included as an exhibit to this proposed rulemaking the additional schedule that the proposed amendments to § 1.10 would require FCMs to file with respect to the cleared swaps of their customers. The collection of information required by the amended § 1.10 are necessary for the Commission's oversight of the FCM's compliance with its minimum financial requirements under the CEA and

[51] 5 U.S.C. 601 *et seq.*

[52] 47 FR 18618 (Apr. 30, 1982).

[53] *Id.* at 18619.

[54] 47 FR at 18620.

[55] *Id.*

[56] 44 U.S.C. 3501 *et seq.*

implementing regulations of the Commission. The increase in the annual reporting burden associated with OMB Collection of Information Control No. 3038–004 would not be significant, as the Commission estimates that a small percentage of FCMs (approximately 21 FCMs) would be required to file the schedule, and the schedule will be included in the Form 1–FR–FCM that they must already file with the Commission. The requirements in part 23 also require monthly and annual financial reports to be filed with the Commission. The Commission estimates that no more than 250 SDs and 50 MSPs would be required to file such reports. The estimated burden of the proposed part 23 financial reporting requirements was calculated as follows:

- *Estimated number of respondents:* 300.
- *Reports annually by each respondent:* 13.
- *Total annual responses:* 3,900.
- *Estimated average number of hours per response:* 2.75.
- *Annual reporting burden:* 10,725.

b. Approval of Margin Models

In the rulemaking proposing margin requirements for uncleared swaps, the Commission would require any SD or MSP to file its margin model with the Commission for approval. Each filing must include an explanation of the manner in which the model meets the requirements of the margin rules; the mechanics of, theoretical basis of, and empirical support for the model; and independent third party validation of the model. The Commission would process filings for models that comply with the minimum requirements established in the margin rules, or that are currently used by a derivatives clearing organization for margining cleared swaps, that are currently used by an entity subject to regular assessment by a prudential regulator for margining uncleared swaps, or that are made available for licensing by a vendor. At a later date, at which point the Commission may have sufficient resources to evaluate such models, the Commission may begin processing filings of proprietary models to be used by SDs and MSPs.

The Commission cannot estimate with precision the frequency with which margin model filings will be made by SDs and MSPs annually, as an SD or MSP may be expected to make one initial filing and then to change or supplement its margin model occasionally. In an attempt to provide conservative estimates, the calculations below have been developed in accordance with the Commission's estimate that there will be 250 SDs and 50 MSPs that will register with it, and with the assumption that 40% of registrants will make 3 model filings per year with respect to the margining of various swap instruments. The estimated average number of hours per filing includes not only preparation of the filing, but also the time associated with third party evaluation of the model.

Estimated number of respondents: 300.

Frequency of filings: One initial response, and then occasional filings.

Filings annually by each respondent: One initial filing, and 1 to 3 occasional filings annually.

Total annual filings: 300 initial filings, and 360 occasional filings annually.

Estimated average number of hours per filing: 60 hours.

Annual filing burden: 21,600.

c. Approval of Capital Models

In this rulemaking proposing capital requirements for SDs and MSPs, the Commission would permit SDs and MSPs to use internal models to calculate minimum capital requirements, subject to the submission of an application to the Commission for approval of the internal model. The application must address several factors, including: (1) Identifying the categories of positions that the SD or MSP holds in its proprietary accounts; (2) describing the methods that the SD or MSP will use to calculate its market risk and credit risk capital requirements; (3) describing the internal models; and (4) describing how the SD or MSP will calculate current exposure and potential future exposure. The SD or MSP also must explain the extent to which the models have been reviewed and approved by the Federal Reserve Board or, as applicable, the SEC.

The Commission cannot estimate with precision the frequency with which SDs and MSPs will file applications with the Commission for the use of internal capital models. At present, only those SDs or MSPs that are subject to prudential regulation or regulation by the SEC will be permitted to use internal models. The Commission cannot presently determine which SDs and MSPs will be subject either to prudential regulation or regulation by the SEC, how many of those SDs or MSPs will file applications with the Commission, or how frequently those SDs and MSPs may submit applications with respect to revised or new models. The Commission additionally cannot presently determine at what time it may be able to consider applications by SDs and MSPs that will be subject solely to Commission regulation, or how many of those SDs and MSPs may eventually file applications with the Commission.

In an attempt to provide conservative estimates, the calculations below have been developed in accordance with the Commission's estimate that there will be 250 SDs and 50 MSPs that will register with it, and that 70% of those SDs and MSPs will file initial applications with the Commission for the use of an internal model. The Commission additionally estimates that in subsequent years, it will be asked to review 30 capital models annually.

- *Estimated number of respondents:* 300.
- *Frequency of responses:* One initial response and then occasional filings.
- *Reports by each respondent:* 1 filing occasionally.
- *Total responses:* 210 initial applications and 30 applications annually.
- *Estimated average number of hours per response:* 30 for applicants presently using internal capital models, 60 for each application not subject to approval by a prudential regulator or the SEC.
- *Reporting burden:* 630 hours initial applications, and up to 1,800 hours annually.

d. Approval of Counterparty Credit Ratings

This proposed capital rulemaking permits an SD or MSP, which is required to apply a credit risk factor to its counterparties, to apply to the Commission for approval to assign internal individual ratings to each of its counterparties, or for an affiliated bank or affiliated broker-dealer to do so. The Commission does not have experience with such an application process, and therefore cannot estimate with precision the burden hours associated with this regulatory provision. In an attempt to provide conservative estimate, the Commission estimates that it may receive up to 4 applications per year from 70% of the 300 anticipated SDs and MSPs that may use internal application models, and that the preparation and submission of these applications would consume up to 8 hours per application. At such time as the Commission is able to approve internal models of SDs and MSPs that are not subject to prudential regulation, the Commission estimates that it will receive up to 4 applications per year from an additional 20% of SDs and MSPs.

- *Estimated Number of Respondents:* 270.
- *Frequency of Responses:* Up to 4 applications annually.

• *Total Annual Responses:* 840 applications initially, and an additional 240 applications eventually.
• *Estimated average number of hours per response:* 8.
• *Annual Reporting burden:* 6,720 initially, plus an additional 1,920 eventually.

e. Recordkeeping and Occasional Reporting Obligations

In this proposed capital rulemaking, the Commission would require SDs and MSPs to present certain information to the Commission on request. Proposed § 23.104 would authorize the Commission to require an SD or MSP that is not subject to prudential regulation to file with the Commission additional financial or operational information, and to prepare and to keep current ledgers or other similar records which show or summarize each transaction affecting the SD's or MSP's asset, liability, income, expense and capital accounts. Under proposed § 23.105, the Commission would require each registered SD or MSP subject to prudential supervision, or each SD or MSP designated as a SIFI, to provide to the Commission, on request, copies of its capital computations and accompanying schedules and other supporting documentation demonstrating compliance with the applicable prudential regulator with jurisdiction over the SD or MSP.

SDs and MSPs additionally will be required to keep comprehensive data records supporting the information contained in the SD's or MSP's unaudited and annual audited financial reports for a period of five years. SDs and MSPs using internal capital models also would be obligated to make and keep current a record of the basis for the credit rating it applies to each of its counterparties for a period of five years.

The Commission is unable to estimate with precision how many requests it will make of SDs and MSPs under proposed §§ 23.104 and 23.105 annually. Additionally, it is unable to estimate with precision the number of records an SD or MSP will be obligated to keep related to the credit rating it applies to its counterparties. In an attempt to provide conservative estimates, the Commission anticipates that it will make 200 requests under §§ 23.104 and 23.105 in the aggregate annually, and that responding to those requests would consume 5 burden hours. It is estimated that recordkeeping of monthly and annual reports, estimated at 3,900 records, would consume .4 burden hours. And, it is estimated that .7 burden hours would be consumed by 210 SDs and MSPs initially and 270 SDs and MSPs eventually to keep credit rating bases for up to an average of 75 counterparties annually.

i. Occasional Reporting Obligations

• *Estimated Number of Respondents:* 200.
• *Frequency of Responses:* Occasional.
• *Total Annual Responses:* 200.
• *Estimated average number of hours per response:* 5 hours.
• *Annual Reporting burden:* 1,000.

ii. Recordkeeping Obligations

• *Estimated Number of Recordkeepers:* 300.
• *Estimated Number of Records per Recordkeeper:* Average 94 initially and 89 eventually.
• *Total Annual Recordkeeping:* 19,650 initially and 24,150 eventually.
• *Estimated average number of hours for recordkeeping:* .4 burden hours for 3,900 records, .7 burden hours for 15,750 records initially, and .7 burden hours for 16,905 records eventually.
• *Annual recordkeeping burden:* 12,585 initially and 13,393 eventually.

f. Occasional Notice Filings

Finally, the proposed capital rulemaking contains provisions that would require registered SDs and MSPs to provide notice to the Commission in the event that certain material financial or operational events occur. These include the notice filing obligations contained in § 1.12 and in proposed §§ 23.104 and 23.105. In an attempt to provide conservative estimates, the Commission anticipates receiving up to 90 occasional notices annually and that the burden of providing those notices will consume up to .7 burden hours.
• *Estimated Number of Respondents:* 90.
• *Frequency of Responses:* Occasional.
• *Total Annual Responses:* 90.
• *Estimated average number of hours per response:* .7.
• *Annual Reporting burden:* 63.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on such proposed requirements in:
• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
• Evaluating the accuracy of the estimated burden of the proposed information collection requirements, including the degree to which the methodology and the assumptions that the Commission employed were valid;
• Enhancing the quality, utility, and clarity of the information proposed to be collected; and
• Minimizing the burden of the proposed information collection requirements on FCMs, SDs, and MSPs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov*. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to the OMB Office of Information and Regulatory Affairs at:
• The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* Desk Officer of the Commodity Futures Trading Commission;
• (202) 395–6566 (fax); or
• *OIRAsubmissions@omb.eop.gov* (e-mail).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Please refer to the **ADDRESSES** section of this rulemaking and the margin rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between thirty (30) and sixty (60) days after publication of the NPRM in the **Federal Register.** Therefore, a comment to OMB is best assured of receiving full consideration if OMB (as well as the Commission) receives it within thirty (30) days of publication of this NPRM.

C. Cost-Benefit Analysis

Section 15(a) of the CEA [57] requires the Commission to consider the costs and benefits of its action before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it simply

[57] 7 U.S.C. 19(a).

requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Summary of proposed requirements. The proposed regulations would implement provisions in Sections 4s(e), (d), and (f) of the Act, which were added by Section 731 of the Dodd-Frank Act. Sections 4s(e), (d), and (f) authorize the Commission to adopt regulations imposing capital requirements and financial condition reporting requirements on SDs and MSPs. The proposed capital requirements would only apply to SDs and MSPs that are not subject to regulation by a prudential regulator. The financial condition reporting requirements primarily apply to SDs and MSPs that are not subject to regulation by a prudential regulator.

The proposed regulations also amend existing requirements for FCMs. Section 724 of the Dodd-Frank Act adds a new Section 4d(f) of the Act, which requires an FCM to segregate from its own assets any money, securities, and property deposited by swap customers to margin, guarantee, or secure swap transactions cleared by or through a derivatives clearing organization. The proposed regulations would require each FCM holding customer funds for cleared swap customers to prepare a monthly Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts under 4d(f) of the CEA (Cleared Swap Segregation Statement). The Cleared Swap Segregation Statement would be filed as part of the FCMs Form 1–FR–FCM. The proposal also would amend the notice filing requirements and capital requirements for FCMs.

Structure of the Analysis

The Commission has decided to propose capital rules for SDs and MSPs falling under four separate categories: (C1) Those that are affiliates of U.S. bank holding companies (BHCs) and are not registered as FCMs; (C2) those that are not affiliated with a BHC and are not registered as FCMs; (C3) those that are affiliates of a BHC and are registered as FCMs; (C4) those that are not affiliated with a BHC and are registered as FCMs. Costs and benefits for each of these four categories is discussed relative to one of two approaches: (D1) What constitutes capital follows the current practice for the given category, and the method for determining the amount of required capital follows an internal models based approach approved by a prudential regulator; (D2) what constitutes capital is tangible net equity, and the method for determining the amount of required capital follows an internal models based approach approved by a prudential regulator. The first approach, D1, which defines capital as bank capital per the Basel Accords, applies to C1 (affiliates of BHCs that are not FCMs). D1 also applies to C3 (affiliates of BHCs that are FCMs) and C4 (non-affiliates of BHCs that are FCMs); in which cases, the definition of capital is adjusted net capital per Regulation 1.17.[58] The second approach, D2, which defines capital as tangible net equity, applies to C2 (non-affiliates of BHCs that are not FCMs).

1. Costs and Benefits of the Proposed Rule to C1 (Affiliates of BHCs That Are Not FCMs) and C3 (Affiliates of BHCs That Are FCMs)

The rules proposed by the Commission for non-bank subsidiaries of BHCs would be the capital rules of the prudential regulator unless the SD or MSP was an FCM, in which case the capital rules would be the Commission's current FCM capital rules.

The Commission notes that the five prudential regulators have recently issued proposed rules that would not impose new capital requirements on the swap entities subject to their prudential supervision. Instead, the swap entities are required to comply with the regulatory capital rules already made applicable to them by their prudential regulators. As noted by the prudential regulators:

> The Agencies have preliminarily determined that compliance with these regulatory capital requirements is sufficient to offset the greater risk to the swap entity and the financial system arising from the use of non-cleared swaps, helps ensure the safety and soundness of the covered swap entity, and is appropriate for the greater risk associated with the non-cleared swaps and non-cleared security-based swaps held as a [swap entity]. In particular, the Agencies note that the capital rules incorporated by reference into the proposed rule already address, in a risk-sensitive and comprehensive manner, the safety and soundness risks posed by a [swap entity's] derivatives positions. In addition, the Agencies preliminarily believe that these capital rules sufficiently take into account and address the risks associated with the derivatives positions that a covered swap entity holds and the other activities conducted by a covered swap entity. (internal footnotes omitted).[59]

The Commission is anticipating that some number of nonbank subsidiaries of BHCs will register with the Commission in order to hold positions that Section 716 of the Dodd-Frank Act may require federally insured bank subsidiaries to "push out" into affiliates within the same bank holding company structure. The number of such potential registrants is not known, but the Commission has proposed rules that would result in the same capital requirements regardless of which non-FCM subsidiary within the bank holding company organization holds the positions. This approach produces neither any material costs nor benefits relative to D1, defined as bank capital per the Basel Accords.[60] The only difference between the proposed rule affecting C1 (affiliate of a BHC that is not an FCM) and the current banking regulatory requirements is the proposed minimum regulatory capital requirement of $20 million. The Commission has requested comment on whether this minimum would result in undue burdens on potential "push out" registrants.

To further promote consistent treatment where an FCM is also a subsidiary of a BHC, the Commission has proposed amendments to § 1.17 to allow it to compute its capital using internal models that have been approved by the Federal Reserve Board, or as applicable, the SEC. Following parallel logic as stated above, the effect of the proposed rule on C3 (affiliate of a BHC that is an FCM), therefore, is to produce neither any material costs nor benefits with respect to the alternative.

[58] Strictly speaking, for D1 to apply to C1, the method for determining capital needs to be Basel III, whereas for D1 to apply to C3 and C4, the method for determining capital needs to be Regulation 1.17 coupled with an allowance for calculating market risk and credit risk capital using internal models. The common feature here is the allowed used of approved internal models. The subsequent analysis abstracts away from any potential differences.

[59] See joint proposed rulemaking issued by the prudential regulators on April 12, 2011, titled "Margin and Capital Requirements for Covered Swap Entities."

[60] This is not to say that the proposed rules for bank capital requirements are without costs and benefits measured with respect to some to-be-specified alternative. It is only to say that a discussion of such costs and benefits is beyond the scope of this analysis.

2. Costs and Benefits of the Proposed Rule to C2 (Non-Affiliates of BHCs That Are Not FCMs) and C4 (Non-Affiliates of BHCs That Are FCMs)

For SDs/MSPs that are not affiliated with BHCs and are not FCMs (C2), the tangible net equity approach would not place undue restrictions on an affected firm's working capital. This approach takes into consideration comments received at a public roundtable held jointly by the CFTC and SEC on December 10, 2010, which included representatives from each of the five prudential regulators. Industry commenters noted that some portion of SD and MSP registrants may include commercial or other entities for whom the costs of compliance with either FCM or bank regulatory capital requirements could be substantial, and that such rules may not fully recognize the ability of such firms to act as financially responsible SDs and MSPs by excluding some of their valuable assets from being counted towards regulatory capital.

SDs and MSPs that are not affiliated with BHCs and are not FCMs (C2) and SDs and MSPs that not affiliates of a BHC and are FCMs (C4) might not be permitted to use models. Rather they might have to use the standardized Basel approach. C2 (non-affiliate of BHCs that are not FCMs) would be required to follow the tangible net equity method with a standardized Basel approach with respect to credit and market risks. C4 (non-affiliates that are FCMs) would be required to follow § 1.17, which generally does not include models. Consequently, while C2 and C4 do not share a common capital definition, the costs and benefits of each relate to the potential for SDS and MSPs potentially being subject to a less risk-sensitive (*i.e.,* standardized) capital charge than if they had been permitted to use an internal models based approach to capital determination.

In this case, the cost of requiring an SD/MSP to take a standardized capital charge for some period of time (perhaps, indefinitely) is the opportunity cost on the potentially higher capital requirement under the standardized approach measured relative to an internal models based approach. When determining its proposed rules, the Commission took into consideration commitments by international regulators to develop risk-sensitive capital requirements for SDs and MSPs. As noted in an October 2010 of the Financial Stability Board:

> Supervisors should apply prudential requirements that appropriately reflect the risks, including systemic risks, of non-centrally cleared OTC derivatives products, such as the reforms proposed by [Basel Committee on Banking Supervision] relating to higher capital requirements * * *.[61]

Under the proposed rules, the amount of capital that these SDs and MSPs must hold would be determined by proposed market risk and OTC credit risk requirements that are based on internationally recognized Based Accord "standardized" methodologies for assessing market risk and OTC derivatives credit risk. The requirements would apply only to uncleared swaps of the SD that are associated with its swap activities, and also would apply to any related hedge positions. These proposed requirements would establish risk sensitive capital requirements that would require SDs and MSPs to hold increasing or decreasing levels of capital as the risk of proprietary positions that they carry increases or decreases, although the level of risk sensitivity achieved under these requirements may prove less than the corresponding level attributable to a well calibrated internal model.

To the extent that the proposed rules would limit the potential use of models, they would potentially increase capital requirements. This potential cost, in turn, needs to be balanced against the operational cost to the Commission of validating internal capital models, as well as the potential model risk arising from an internal models based capital calculation that turns out to be less conservative than the corresponding standardized calculation. Since both potential increased capital requirements resulting under the proposed rules as well as forgone investment opportunities attributable to that increased capital are difficult to assess, the Commission invites comment.

Finally, if increased capital requirements result under the proposed rules, such requirements may promote financial integrity by reducing the aggregate amount of capital at risk, with the cost of this reduction being paid in terms of reduced return expectations. Depending on the level of the increased capital required and the effect it has on the willingness of market participants to engage in swaps transactions, market efficiency may be negatively impacted through the introduction of higher costs. Any significant reduction in market participation would be anticipated to exercise correspondingly negative consequences on price discovery through reductions in liquidity.

[61] See "Implementing OTC Derivatives Market Reforms", report of the Financial Stability Board (FSB) dated October 25, 2010, at p. 34. The FSB was formed in 2009 by representatives of the G–20 countries as a successor to the Financial Stability Forum, formed by the G–7 countries in 1999.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

17 CFR Part 140

Authority delegations (Government agencies).

For the reasons stated in this release, the Commission proposes to amend chapter I of title 17 of the Code of Federal Regulations, by amending in that chapter part 1; part 23, as proposed to be added at 75 FR 71379, published November 23, 2010; and part 140, as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 9a, 12, 12a, 16, 18, 19, 21, and 23.

2. Amend § 1.10 by revising paragraphs (c), (d)(1)(v), (d)(2)(iv), (d)(2)(vi), and (g)(2)(ii) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (as set forth in § 140.02 of this chapter) and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received

by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

* * * * *

(d) * * *

(1) * * *

(v) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, and the statement of cleared swap customer segregation requirements and funds in cleared swap customer accounts under section 4d(f) of the Act as of the date for which the report is made; and

* * * * *

(2) * * *

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, and the statement of cleared swap customer segregation requirements and funds in cleared swap customer accounts under section 4d(f) of the Act as of the date for which the report is made;

* * * * *

(vi) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this part and, for a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, and the statement of cleared swap customer segregation requirements and funds in cleared swap customer accounts under section 4d(f) of the Act, in the certified Form 1–FR with the applicant's or registrant's corresponding uncertified most recent Form 1–FR filing when material differences exist or, if no material differences exist, a statement so indicating; and

* * * * *

(g) * * *

(2) * * *

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, and the Statement (to be filed by futures commission merchants only) of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts under section 4d(f) of the Act.

3. Amend § 1.12 by:

a. Revising paragraphs (b)(3), (b)(4), (f)(4), and (h); and

b. Adding paragraph (b)(5).

The revisions and addtion read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(3) 150 percent of the amount of adjusted net capital required by a registered futures association of which it is a member, unless such amount has been determined by a margin-based capital computation set forth in the rules of the registered futures association, and such amount meets or exceeds the amount of adjusted net capital required under the margin-based capital computation set forth in § 1.17(a)(1)(i)(B) of this part, in which case the required percentage is 110 percent,

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(c) of the Securities and Exchange Commission (17 CFR 240.17a–11(c)), or

(5) For security-based swap dealers or material security-based swap participants, the amount of net capital specified in the rules of the Securities and Exchange Commission that impose comparable reporting requirements as set forth in this paragraph (b), must file written notice to that effect as set forth in paragraph (i) of this section within twenty-four (24) hours of such event.

* * * * *

(f) * * *

(4) A futures commission merchant shall report immediately by telephone, confirmed immediately in writing by facsimile notice, whenever any commodity futures, option, swap or other Commission regulated account it carries is subject to a margin call, or call for other deposits required by the futures commission merchant, that exceeds the futures commission merchant's excess adjusted net capital, determined in accordance with § 1.17 of this part, and such call has not been answered by the close of business on the day following the issuance of the call. This applies to all accounts carried by the futures commission merchant, whether customer, noncustomer, or omnibus, that are subject to margining, including commodity futures, options on futures, and swap positions. In addition to actual margin deposits by an account owner, a futures commission merchant may also take account of favorable market moves in determining whether the margin call is required to be reported under this paragraph.

* * * * *

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers, that the total amount set aside on behalf of customers trading on non-United States markets, or that the total amount of its funds in segregated accounts on behalf of customers for cleared swap transactions is less than the total amount of such funds required by the Act and the Commission's rules to be on deposit in segregated futures accounts, secured amount accounts, or segregated cleared swap accounts, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice, to the registrant's designated self-regulatory organization and the principal office of the Commission in Washington, DC, to the attentions of the Director and the Chief Accountant of the Division of Clearing and Intermediary Oversight.

* * * * *

4. Amend § 1.16 by revising paragraphs (a)(4), (d)(1), and (d)(2)(iv) to read as follows:

§ 1.16 Qualifications and reports of accountants.

(a) * * *

(4) *Customer.* The term "customer" includes a customer as defined in

§ 1.3(k) of this part; a cleared swaps customer as defined in § 22.2 of this chapter; and a foreign futures or foreign options customer as defined in § 30.1(c) of this chapter.

* * * * *

(d) *Audit objectives.* (1) The audit must be made in accordance with generally accepted auditing standards and must include a review and appropriate tests of the accounting system, the internal accounting controls, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in the accounting system, the internal accounting controls, and the procedures for safeguarding customer and firm assets (including, in the case of a futures commission merchant, the segregation requirements of section 4d(a)(2) of the Act and these regulations, the secured amount requirements of the Act and these regulations, and the segregation requirements for cleared swap positions under section 4d(f) of the Act and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making periodic computations of the minimum financial requirements pursuant to § 1.17 of this chapter and in the case of a futures commission merchant, daily computations of the segregation requirements of section 4d(a)(2) of the Act and these regulations, the secured amount requirements of the Act and these regulations, and the segregation requirements for cleared swap positions under section 4d(f) of the Act and these regulations.

(2) * * *

(iv) Result in violations of the Commission's segregation, secured amount or cleared swaps segregation amount (in the case of a futures commission merchant), recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraph (d)(2)(i), (ii), or (iii) of this section

* * * * *

5. Amend § 1.17 by:

a. Revising paragraph (a)(1)(i)(A);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(9);

d. Revising paragraph (c)(2)(i);

e. Revising paragraphs (c)(2)(ii)(D) and (G);

f. Adding paragraphs (c)(5)(iii) and (iv);

g. Revising paragraphs (c)(5)(v), (viii), and (ix);

h. Revising paragraph (c)(6); and

i. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(8) and (c)(9) and add new paragraph (c)(7).

The revisions and additions read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) * * *

(A) $1,000,000, *Provided, however,* that if the futures commission merchant also is a registered swap dealer, the minimum amount shall be $20,000,000;

* * * * *

(b) * * *

(2) *Customer.* This term means customer as defined in § 1.3(k) of this chapter; cleared over the counter customer as defined in § 1.17(b)(10) of this chapter, and includes a foreign futures or foreign options customer as defined in § 30.1(c) of this chapter.

* * * * *

(9) *Cleared over the counter derivative positions* means over the counter derivative instruments, including swaps as defined in section 1a(47) of the Act, of any person in accounts that are carried on the books of the futures commission merchant and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction, including cleared swaps as defined in section 1a(7) of the Act.

* * * * *

(c) * * *

(2) * * *

(i) Exclude any unsecured commodity futures, option, cleared swap, or other Commission regulated account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers', and proprietary accounts, which are the subject of calls for margin or other required deposits may be included in current assets until the close of business on the business day following the date on which such deficit or debit ledger balance originated providing that the account had timely satisfied, through the deposit of new funds, the previous day's debit or deficits, if any, in its entirety.

(ii) * * *

(D) Receivables from registered futures commission merchants or brokers, resulting from commodity futures, options, cleared swaps, or other Commission regulated transactions, except those specifically excluded under paragraph (c)(2)(i) of this section;

* * * * *

(G) Receivables from third-party custodians that arise from initial margin deposits associated with bilateral swap transactions pursuant to § 23.158 of this chapter.

(5) * * *

(iii) For positions in over-the-counter interest rate swaps that are not cleared by a clearing organization, the following amounts:

(A) If not hedged with U.S. Treasury securities of corresponding maturities or matched with offsetting interest rate swap positions with corresponding terms and maturities, the applicable haircut shall be the notional amount of the interest rate swaps multiplied by the applicable percentages for the underlying securities specified in Rule 240.15c3–1(c)(2)(vi)(A)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)(A)(i)), as if such notional amount was the market value of a security issued or guaranteed as to principal or interest by the United States;

(B) If hedged with U.S. Treasury securities of corresponding maturities or matched with offsetting interest rate swap positions with corresponding terms and maturities, and such interest rate swaps are maturing in ten years or less, the applicable haircut shall be one percent of the notional amount of the interest rate swaps; and

(C) If hedged with U.S. Treasury securities of corresponding maturities or matched with offsetting interest rate swap positions with corresponding terms and maturities, and such interest rate swaps are maturing in excess of ten years, the applicable haircut shall be three percent of the notional amount of the interest rate swaps;

(iv) For the net position in the following:

(A) Over-the-counter credit default swaps that are not cleared by a clearing organization, the notional principal amount multiplied by the applicable percentages, as determined by the underlying securities and the remaining maturity of the swap agreement, that are

specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

(B) Over-the-counter equity swaps that are not cleared by a clearing organization, 15 percent of the notional principal amount;

(C) Over-the-counter foreign currency swap transactions involving euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, 6 percent of the notional principal amount of the swap transaction;

(D) Over-the-counter foreign currency swap transactions involving currencies other than euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, 20 percent of the notional principal amount of the swap transaction;

(E) Over-the-counter commodity swaps, 20 percent of the market value of the notional amount of the underlying commodities; or

(F) Over-the-counter swap transactions involving an underlying instrument that is not listed in paragraph (c)(5)(iv)(A), (B), (C), (D), or (E) of this section, 20 percent of the effective notional principal amount of the swap transaction.

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to sections 4d(a)(2) and 4d(f) of the Act and the regulations in this chapter, and § 30.7 secured accounts as set forth in part 30 of this chapter, which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

* * * * *

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures, options, cleared swaps or other Commission regulated accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding three business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding three business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(viii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of the value attributable to the asset pursuant to the margin rules of the applicable board of trade, or the market value of the asset after application of the percentage deductions specified in this paragraph (c)(5);

(ix) In the case of a futures commission merchant, for undermargined commodity futures, options, cleared swaps, or other Commission regulated noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding two business days or less to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(ix). In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this subparagraph shall be the lesser of the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or the market value of such asset after application of the percentage deductions specified in this paragraph (c)(5);

* * * * *

(6) * * *

(i)(A) Any futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer, and who also satisfies the other requirements of this paragraph (c)(6), may elect to compute its adjusted net capital using the alternative capital deductions that the Securities and Exchange Commission has approved by written order, provided, however, that such order was dated before May 12, 2011;

(B) If an election under this paragraph (c)(6) was authorized before the date specified in paragraph (c)(6)(i)(A) of this section, and the futures commission merchant otherwise remains in compliance with this paragraph (c)(6), a futures commission merchant that is permitted by the Securities and Exchange Commission to use alternative capital deductions for its unsecured receivables from over-the-counter transactions in derivatives, or for its proprietary positions in securities, commodities, forward contracts, swap transactions, options, or futures contracts, may continue to use these same alternative capital deductions when computing its adjusted net capital in lieu of the standard deductions otherwise specified in this section.

(C) If a futures commission merchant computing alternative deductions under paragraph (c)(6)(B) of this section is also registered with the Commission as swap dealer or major swap participant, or registered with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant, the alternative deductions approved under this paragraph (c)(6) shall remain effective only if the futures commission merchant has filed an application under § 23.103 of this chapter and the application is pending approval. A denial or approval of an application made under § 23.103 shall also terminate approval of alternative deductions under this paragraph (c)(6). The futures commission merchant's capital deductions must thereafter be calculated as required under the terms of the Commission's order issued under § 23.103.

* * * * *

(7) Any futures commission merchant that is also registered as a swap dealer

or major swap participant, or is also registered as a security-based swap dealer or major security-based swap participant, and which has received approval of its application to the Commission under § 23.103 of this chapter for capital computations using the firm's internal models, shall calculate its adjusted net capital in accordance with the terms and conditions of such Commission approval.

* * * * *

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

6. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

7. Part 23, as proposed to be added at 75 FR 71379, November 213, 2010, is amended by adding Subpart E to read as follows:

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

Sec.

23.100 Definitions applicable to capital requirements.
23.101 Minimum financial requirements for swap dealers and major swap participants.
23.102 Tangible net equity.
23.103 Calculation of market risk exposure requirement and over-the-counter derivatives credit risk requirement using internal models.
23.104 Calculation of market risk exposure requirement and over-the-counter derivatives credit risk requirement when models are not approved.
23.105 Maintenance of minimum financial requirements by swap dealers and major swap participants.
23.106 Financial recordkeeping and reporting requirements for swap dealers and major swap participants.
23.107–23.149 [Reserved]

§ 23.100 Definitions applicable to capital requirements.

For purposes of §§ 23.101 through 23.149 of subpart E, the following terms are defined as follows:

Market risk exposure. This term means the risk of loss resulting from movements in market prices. Market risk exposure includes "specific risk" (referring to those risks that affect the market value of a specific instrument, such as the credit risk of the issuer of the particular instrument, but do not materially alter broad market conditions), and it also includes market risk in general (referring to the change in the market value of a particular asset that results from broad market movements, such as a change in market interest rates, foreign exchange rates, equity prices, and commodity prices).

Market risk exposure requirement. This term refers to the amount that the registered swap dealer or major swap participant is required to compute under § 23.104, or to compute using internal models as approved under § 23.103.

Over-the-counter derivatives credit risk. This term refers to the risk that the counterparty to an over-the-counter transaction could default before the final settlement of the transaction's cash flows.

Over-the-counter derivatives credit risk requirement. This term refers to the amount that the registered swap dealer or major swap participant is required to compute under § 23.104, or to compute using internal models approved under § 23.103.

Prudential regulator. This term has the same meaning as set forth in section 1a(39) of the Act, and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency, as applicable to a swap dealer or major swap participant.

Regulatory capital requirement. This term refers to each of the capital requirements that § 23.101 of this part applies to a swap dealer or major swap participant.

§ 23.101 Minimum financial requirements for swap dealers and major swap participants.

(a)(1) Except as provided in paragraph (a)(2), (3), or (4) of this section, each registered swap dealer must meet or exceed the greatest of the following regulatory capital requirements:

(i) Tangible net equity (as defined in § 23.102 of this part) in an amount equal to $20,000,000 plus the amounts calculated under this part for the swap dealer's market risk exposure requirement and its over-the-counter derivatives credit risk requirement associated with swap positions and related hedge positions that are part of the swap dealer's swap activities; or,

(ii) The amount of capital required by a registered futures association of which the swap dealer is a member.

(2) Except as provided in paragraph (a)(3) or (4) of this section, each registered swap dealer that is a subsidiary of a U.S. bank holding company must meet or exceed the greatest of the following regulatory capital requirements:

(i) $20 million of Tier 1 capital as defined in 12 CFR part 225, appendix A, § II.A;

(ii) The swap dealer's minimum risk-based ratio requirements set forth in 12 CFR part 225, and any appendices thereto, as if the swap dealer itself were a U.S. bank-holding company; or,

(iii) The amount of capital required by a registered futures association of which the swap dealer is a member.

(3) A registered swap dealer that is subject to minimum capital requirements established by rule or regulation of a prudential regulator, or a registered swap dealer that also is a registered futures commission merchant subject to the capital requirements of § 1.17 of this chapter, is not subject to the regulatory capital requirements set forth in paragraph (a)(1) or (2) of this section.

(4) A registered swap dealer that is a U.S. nonbank financial company that has been designated a systemically important financial institution by the Financial Stability Oversight Council and subject to supervision by the Board of Governors of the Federal Reserve System is not subject to the regulatory capital requirements set forth in paragraph (a)(1) or (2) of this section.

(b)(1) Except as provided in paragraph (b)(2), (3), or (4) of this section, each major swap participant must meet or exceed the greatest of the following regulatory capital requirements:

(i) Tangible net equity (as defined in § 23.102 of this part) in an amount equal to $20,000,000 plus the amounts calculated under this part for the major swap participant's market risk exposure requirement and its over-the-counter derivatives credit risk requirement associated with its swap positions and related hedge positions; or

(ii) The amount of capital required by a registered futures association of which the major swap participant is a member.

(2) Except as provided in paragraph (b)(3) or (4) of this section, each registered major swap participant that is a subsidiary of a U.S. bank-holding company must meet or exceed the greatest of the following regulatory capital requirements:

(i) $20 million of Tier 1 capital as defined in 12 CFR part 225, appendix A, section II.A;

(ii) The major swap participant's minimum risk-based ratio requirements set forth in 12 CFR part 225, and any appendices thereto, as if the major swap participant itself were a U.S. bank-holding company; or,

(iii) The amount of capital required by a registered futures association of which the major swap participant is a member.

(3) A registered major swap participant that is subject to minimum capital requirements established by rule or regulation of a prudential regulator, or a registered major swap participant that also is a registered futures commission merchant subject to the capital requirements of § 1.17 of this chapter, is not subject to the regulatory capital requirements set forth in paragraph (b)(1) or (2) of this section.

(4) A registered major swap participant that is a U.S. nonbank financial company that has been designated a systemically important financial institution by the Financial Stability Oversight Council and subject to supervision by the Board of Governors of the Federal Reserve System is not subject to the regulatory capital requirements set forth in paragraph (b)(1) or (2) of this section.

(c)(1) Before any applicant may be registered as a swap dealer or major swap participant, the applicant must demonstrate to the satisfaction of the National Futures Association one of the following:

(i) Its compliance with the applicable regulatory capital requirements in paragraphs (a)(1), (2), (b)(1) or (2) of this section;

(ii) that it is a futures commission merchant that complies with § 1.17 of this chapter;

(iii) that its minimum regulatory capital requirements are supervised by a prudential regulator in paragraph (a)(3) or (b)(3) of this section; or

(iv) that it is designated by the Financial Stability Oversight Council as a systemically important financial institution and subject to supervision by the Federal Reserve Board under paragraph (a)(4) or (b)(4) of this section.

(2) Each swap dealer and major swap participant subject to the minimum capital requirements set forth in paragraphs (a) and (b) of this section must be in compliance with the Commission's minimum capital requirements at all times and must be able to demonstrate such compliance to the satisfaction of the Commission.

§ 23.102 Tangible net equity.

(a) Tangible net equity is a swap dealer's or major swap participant's equity as determined under U.S. generally accepted accounting principles, and excludes goodwill and other intangible assets.

(b)(1) Subject to the provisions of paragraph (b)(2) of this section:

(i) Tangible net equity is computed by consolidating in a single computation assets and liabilities of any subsidiary or affiliate for which the swap dealer or major swap participant guarantees, endorses, or assumes directly or indirectly the obligations or liabilities; or

(ii) If an opinion of outside counsel is obtained as provided for in paragraph (b)(3) of this section, a swap dealer or major swap participant may elect to consolidate assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the swap dealer or major swap participant, but which is majority owned and controlled by the swap dealer or major swap participant.

(2) If the consolidation required or permitted under paragraph (b)(1) of this section results in the increase of the swap dealer's or major swap participant's tangible net equity or decreases the minimum regulatory capital requirement, such benefits shall not be recognized unless an opinion of counsel meeting the requirements of paragraph (b)(3) of this section has been obtained by the swap dealer or major swap participant.

(3) For purposes of paragraph (b)(1) or (2) of this section, the swap dealer or major swap participant shall demonstrate by written opinion of outside counsel that the net asset values or the portion thereof related to the parent's ownership interest in the subsidiary or affiliate, may be caused by the swap dealer or major swap participant or an appointed trustee, to be distributed to the swap dealer or major swap participant within 30 calendar days. Such opinion also must set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholders, employees, litigants, and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission by rule or interpretation may require. Such opinion must be current and periodically renewed in connection with the swap dealer's or major swap participant's annual audit pursuant to part 23 of this title or upon any material change in circumstances.

(4) In preparing a consolidated computation of tangible net equity:

(i) Consolidated tangible net equity shall be reduced by the estimated amount of any tax reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate; and

(ii) Each swap dealer or major swap participant included within the consolidation shall at all times be in compliance with the regulatory capital requirements to which it is subject.

(5) No swap dealer or major swap participant shall guarantee, endorse, or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of tangible net equity of the swap dealer or major swap participant, except as provided in paragraph (b)(4)(ii) of this section.

§ 23.103 Calculation of market risk exposure requirement and over-the-counter derivatives credit risk requirement using internal models

(a) A registered swap dealer or major swap participant may apply to the Commission for approval to use internal models under terms and conditions required by the Commission and by these regulations when calculating:

(1) the amounts that the swap dealer or major swap participant must add to its tangible net equity for its market risk exposure requirement and over-the-counter derivatives credit risk requirement to compute its minimum regulatory capital requirement under §§ 23.101(a)(1)(i) or 23.101(b)(1)(i), respectively, of this part;

(2) Its market risk and over-the-counter derivatives credit risk requirements under 12 CFR part 225, Appendix E and Appendix G, if the swap dealer or major swap participant is a subsidiary of a U.S. bank holding company that must meet regulatory capital requirements set forth in § 23.101(a)(2)(ii) or § 23.101(b)(2)(ii) of this part; or

(3) The deductions from its net capital for market risk exposure and over-the-counter derivatives credit risk, in lieu of deductions otherwise required under § 1.17(c) of this chapter, if the swap dealer or major swap participant also is registered as a futures commission merchant.

(b) The application shall be in writing and filed with the regional office of the Commission having local jurisdiction over the swap dealer or major swap participant as set forth in § 140.2 of this chapter. The application may be filed electronically in accordance with instructions approved by the Commission and specified on the Commission's Web site. A petition for confidential treatment of information within the application may be submitted according to procedures set forth in § 145.9 of this chapter.

(c) The application must identify the categories of positions for which the

swap dealer or major swap participant will use internal models for its computations for market risk and over-the-counter derivatives credit risk, and, for each such category, provide a description of the methods that the swap dealer or major swap participant will use to calculate its deductions, and also, if calculated separately, deductions for specific risk; a description of the internal models, and an overview of the integration of the models into the internal risk management control system of the swap dealer or major swap participant; a description of how the swap dealer or major swap participant will calculate current exposure and potential future exposure for its over-the-counter derivatives credit risk; a description of how the swap dealer or major swap participant will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and a description of the estimated market risk exposure and over-the-counter derivatives credit risk exposure amounts to be reported by the swap dealer or major swap participant.

(d) The swap dealer or major swap participant must promptly, upon the request of the Commission at any time, provide any other explanatory information as the Commission may require at its discretion regarding the swap dealer's or major swap participant's internal models and the swap dealer's or major swap participant's computation of its market risk exposure or over-the-counter derivatives credit risk requirements.

(e) Except as permitted under paragraph (f) of this section, the swap dealer or major swap participant requesting approval under this section must be either:

(1) A subsidiary of a U.S. bank holding company whose calculations of minimum risk-based capital requirements under § 23.101 complies with the requirements that are set forth in regulations of the Board of Governors of the Federal Reserve System (Federal Reserve Board) at 12 CFR part 225, appendix E and appendix G for calculating capital requirements for its market risk exposure and over-the-counter derivatives credit risk requirements, and whose internal models have been reviewed and are subject to regular assessment by the Federal Reserve Board; or

(2) A security-based swap dealer or major security-based swap participant registered with the Securities and Exchange Commission, and whose internal models used for calculating capital requirements for its market risk exposure and its over-the-counter derivatives credit risk have been reviewed and are subject to regular assessment by the Securities and Exchange Commission.

(f) At any time after the effective date of this rule, the Commission may in its sole discretion determine by written order that swap dealers or major swap participants not described in paragraph (e) of this section also may apply for approval under this section to calculate the amount of their market risk exposure requirements or over-the-counter derivatives credit risk requirements using proprietary internal models.

(g) The Commission may approve or deny the application, or approve an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest or for the protection of customers, after determining, among other things, whether the applicant has met the requirements of this section and is in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations.

(h) A swap dealer or major swap participant may no longer use internal models to compute its market risk exposure requirement and over-the-counter counterparty credit risk requirement, upon the occurrence of any of the following:

(1) Internal models that received Commission approval under paragraph (e) of this section are no longer periodically reviewed or assessed by the Federal Reserve Board or the Securities and Exchange Commission;

(2) The swap dealer or major swap participant has changed materially a mathematical model described in the application or changed materially its internal risk management control system without first submitting amendments identifying such changes and obtaining Commission approval for such changes;

(3) The Commission determines that the internal models are no longer sufficient for purposes of the capital calculations of the swap dealer or major swap participant as a result of changes in the operations of the swap dealer or major swap participant;

(4) The swap dealer or major swap participant fails to come into compliance with its requirements under this section, after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the firm is not in compliance with its requirements, and must come into compliance by a date specified in the notice; or

(5) The Commission by written order finds that permitting the swap dealer or major swap participant to continue to use the internal models is no longer necessary or appropriate for the protection of customers of the futures commission merchant (if the swap dealer or major swap participant is also a futures commission merchant) or of the integrity of Commission-regulated markets.

§ 23.104 Calculation of market risk exposure requirement and over-the-counter derivatives credit risk requirement when models are not approved.

(a) *General requirements for calculations.* If internal models have not been submitted and received approval under § 23.103 of this part, the market risk exposure requirement shall be calculated as set forth in paragraphs (b) through (d) of this section, and the over-the-counter derivatives credit risk requirement shall be calculated as set forth in paragraphs (e) through (j) of this section.

(b) *Market risk exposure requirement.* (1) A swap dealer or major swap participant that must meet the minimum regulatory capital requirements in § 23.101(a)(1)(i) or 23.101(b)(1)(i), respectively, shall calculate its market risk exposure requirement as the sum of the amounts for specific risk in paragraphs (c) of this section and the amounts for market risk in general in paragraph (d) of this section, as applied to the swap dealer's or major swap participant's:

(i) Swaps that are not cleared; and

(ii) Debt instruments, equities, commodities or foreign currency, including derivatives of the same, that hedge such uncleared swaps;

(2) A swap dealer or major swap participant that must meet the requirements in § 23.101(a)(2)(ii) or § 23.101(b)(2)(ii) of this part shall calculate the market risk deductions required by 12 CFR part 225, Appendix E as the sum of the amounts for specific risk in paragraphs (c) of this section and the amounts for market risk in general in paragraph (d) of this section, as applied to the swap dealer's or major swap participant's "covered positions", as that term is defined in 12 CFR part 225, Appendix E. Section 2(a); and

(3) A swap dealer or major swap participant that is also a futures commission merchant shall calculate its deductions from net capital for market risk and over-the-counter derivatives credit risk in accordance with § 1.17(c) of this chapter.

(4) The following definitions apply for purposes of the calculation of the market risk exposure requirement:

"*Credit derivative*" means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider).

"*Debt positions*" means fixed-rate or floating rate instruments, and other instruments with values that react primarily to changes in interest rates, including certain non-convertible preferred stock; convertible bonds; instruments subject to repurchase and lending agreements; and any derivatives (including written and purchased options) for which the underlying instrument is a debt position. Excluded from this definition are asset-backed securities, mortgage-backed securities and collateralized debt obligations (except for pass-through mortgage-backed securities issued or guaranteed as to principal or interest by the United States or any agency thereof); municipal securities; and non-investment grade debt securities. Debt instruments excluded from this definition shall remain subject to applicable haircuts under § 240.15c3–1 of this title.

"*Equity Positions*" means equity instruments and other instruments with values that react primarily to changes in equity prices, including voting or non-voting common stock, certain convertible bonds, and commitments to buy or sell equity instruments. Also included are derivatives (including written and purchased options) for which the underlying is an equity position.

(c) *Specific risk.* (1) The required deduction from capital for specific risk shall equal the sum of the weighted values for debt positions held by the swap dealer or major swap participant, as determined in paragraph (c)(2) of this section, plus the sum of the weighted values of the equity positions held by the swap dealer or major swap participant, as determined under paragraph (c)(3) of this section.

(2) *Sum of weighted values for debt positions.* The sum of the required weighted values of debt positions is determined by multiplying the weighting factor indicated in Table A in paragraph (c)(2)(v) of this section by the absolute value of the current market value of each net long or short debt position held by the swap dealer or major swap participant, and summing all of the calculated weighted values for each position. For purposes of the calculation:

(i) Interest rate derivatives shall be included as set forth in paragraph (d)(2) of this section;

(ii) Credit derivatives shall be included as set forth in paragraph (c)(4) of this section;

(iii) Long and short debt positions (including derivatives) in identical debt issues or debt indices may be netted; and

(iv) Debt instruments are classified in Table A of this section as one of the following categories:

(A) "*Government category*" includes all debt instruments of central governments that are members of the Organization for Economic Co-operation and Development ("OECD") including bonds, Treasury bills, and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent of liabilities booked in that currency;

(B) "*Qualifying category*" includes debt instruments of U.S. government-sponsored agencies, general obligation debt instruments issued by states and other political subdivisions of OECD countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution; or

(C) "*Other category*" includes debt instruments that are not included in the government or qualifying categories.

(v) Table A is as set forth as follows:

TABLE A—"SPECIFIC RISK" WEIGHTING FACTORS FOR DEBT POSITIONS

Category	Remaining maturity (contractual)	Weighting factor (in percent)
Government	N/A	0.00
Qualifying	6 months or less	0.25
	Over 6 months to 24 months	1.00
	Over 24 months	1.60
Other	N/A	8.00

(3) *Sum of the weighted values for equity positions.* The sum of the required weighted values of equity positions is determined by multiplying a weighting factor of 8 percent by the absolute value of the current market value of each net long or short equity position, and summing all of the risk-weighted values. For purposes of the calculation:

(i) Equity derivatives shall be included as set forth in paragraph (d)(4) of this section; and

(ii) Long and short equity positions (including derivatives) in identical equity issues or equity indices in the same market may be netted.

(4) *Credit derivatives.* The following requirements apply when computing specific risk charges for credit derivatives:

(i) For each credit derivative in which the swap dealer or major swap participant is the protection seller, the credit derivative is treated as a long notional position in the reference exposure, and where the swap dealer or major swap participant is the protection buyer, the credit derivative is treated as a short notional position in the reference exposure.

(ii) The specific risk charge for an individual debt position that represents purchased credit protection is capped at the market value of the protection.

(iii) A set of transactions consisting of a debt position and its credit derivative hedge has a specific risk charge of zero if the debt position is fully hedged by a total return swap (or similar instrument where there is a matching of payments and changes in market value of the position) and there is an exact match between the reference obligation of the swap and the debt position, the maturity of the swap and the debt position, and the currency of the swap and the debt position.

(iv) The specific risk charge for a set of transactions consisting of a debt position and its credit derivative hedge that does not meet the criteria of paragraph (c)(4)(iii) of this section is equal to 20.0 percent of the capital requirement for the side of the transaction with the higher capital requirement when the credit risk of the position is fully hedged by a credit default swap or similar instrument and there is an exact match between the reference obligation of the credit derivative hedge and the debt position, the maturity of the credit derivative

hedge and the debt position, and the currency of the credit derivative hedge and the debt position.

(v) The specific risk charge for a set of transactions consisting of a debt position and its credit derivative hedge that does not meet the criteria of either paragraphs (c)(4)(iii) or (iv) of this section, but in which all or substantially all of the price risk has been hedged, is equal to the specific risk charge for the side of the transaction with the higher specific risk charge.

(vi) The total specific risk charge for a portfolio of nth-to-default credit derivatives is the sum of the specific risk charges for individual nth-to-default credit derivatives, as computed under this paragraph. The specific risk charge for each nth-to-default credit derivative position applies irrespective of whether a swap dealer or major swap participant is a net protection buyer or net protection seller.

(vii) The specific risk charge for a first-to-default credit derivative is the lesser of:

(A) The sum of the specific risk charges for the individual reference credit exposures in the group of reference exposures; or

(B) The maximum possible credit event payment under the credit derivative contract.

(viii) Where a swap dealer or major swap participant has a risk position in one of the reference credit exposures underlying a first-to-default credit derivative and this credit derivative hedges the swap dealer's or major swap participant's risk position, the swap dealer or major swap participant is allowed to reduce both the specific risk charge for the reference credit exposure and that part of the specific risk charge for the credit derivative that relates to this particular reference credit exposure such that its specific risk charge for the pair reflects the net position in the reference credit exposure. Where a swap dealer or major swap participant has multiple risk positions in reference credit exposures underlying a first-to-default credit derivative, this offset is allowed only for the underlying reference credit exposure having the lowest specific risk charge.

(ix) The specific risk charge for a second or-subsequent-to-default credit derivative is the lesser of:

(A) The sum of the specific risk charges for the individual reference credit exposures in the group of reference exposures, but disregarding the (n–1) obligations with the lowest specific risk add-ons; or

(B) The maximum possible credit event payment under the credit derivative contract.

(x) For second-or-subsequent-to-default credit derivatives, no offset of the specific risk charge with an underlying reference credit exposure is allowed.

(d) *Market Risk in General.* The required deduction from capital for the market risk in general of the swap dealer or major swap participant's proprietary positions shall be computed as set forth in this paragraph:

(1) *Interest rate risk: Time-bands and zones.* A swap dealer or major swap participant shall calculate a general market risk capital charge for interest rate risk on proprietary positions that equals the sum of the total time-band disallowances in paragraph (d)(1)(vii) of this section; the total intra-zone disallowances and the total inter-zone disallowances in paragraphs (d)(1)(viii)(C) and (F) of this section, and the amount of the final net risk-weighted long or short position in paragraph (d)(1)(viii)(G) of this section, in accordance with the following methodology:

(i) Each long or short interest rate position shall be reported at its current market value and distributed into the time bands of the maturity ladder specified in Table B of this section. Interest rate derivatives shall be included as set forth in paragraph (d)(2) of this section. For purposes of this distribution into time-bands, fixed-rate instruments are allocated according to the remaining term to maturity and floating-rate instruments according to the next repricing date.

(ii) The long interest rate positions in each time-band are summed and the short interest rate positions in each time-band are summed.

(iii) The summed long interest rate positions in each time-band are multiplied by the appropriate risk-weight factor set forth in Table B of this section to determine the risk-weighted long interest rate position for each time-band. The summed short interest rate positions in each time-band also are multiplied by the appropriate risk-weight factor in Table B of this section to determine the risk-weighted short interest rate position for each time-band.

(iv) Table B is as set forth as follows:

TABLE B—TIME-BANDS AND RISK WEIGHTS FOR INTEREST RATE POSITIONS

Zone	Coupon 3% or more	Coupon less than 3%	Risk weight (%)
1	1 month or less	1 month or less	0.00
1	1 to 3 months	1 to 3 months	0.20
1	3 to 6 months	3 to 6 months	0.40
1	6 to 12 months	6 to 12 months	0.70
2	1 to 2 years	1.0 to 1.9 years	1.25
2	2 to 3 years	1.9 to 2.8 years	1.75
2	3 to 4 years	2.8 to 3.6 years	2.25
3	4 to 5 years	3.6 to 4.3 years	2.75
3	5 to 7 years	4.3 to 5.7 years	3.25
3	7 to 10 years	5.7 to 7.3 years	3.75
3	10 to 15 years	7.3 to 9.3 years	4.50
3	15 to 20 years	9.3 to 10.6 years	5.25
3	Over 20 years	10.6 to 12 years	6.00
3		12 to 20 years	8.00
		Over 20 years	12.50

(v) If a time-band includes both risk-weighted long interest rate positions and short interest rate positions, such risk-weighted long positions and short interest rate positions are netted, resulting in a single net risk-weighted long or short interest rate position for each time-band.

(vi) If risk-weighted long interest rate positions and risk-weighted short interest rate positions in a time-band have been netted, a "time-band disallowance" charge is computed equal to 10 percent of the smaller of the total risk-weighted long interest rate position

or the total risk-weighted short interest rate position, or if the total long risk-weighted interest rate position and the total short risk-weighted interest rate position are equal, 10 percent of either long or short position.

(vii) The total time-band disallowance equals the sum of the absolute values of the individual disallowances for each time-band in Table B.

(viii) Table C of this section also groups the time-bands into three "zones": Zone 1 consists of the first three time-bands (0 up to 1 month; 1 month up to 3 months, and 3 months up to 6 months); zone 2 consists of the next four time-bands (6 months up to 12 months; 1 year up to 2 years; 2 years up to 3 years; and 3 years up to 4 years), and the remaining time-bands in Table C are in zone 3. Table C is as set forth below:

TABLE C—HORIZONTAL DISALLOWANCE

Zone	Time band	Within the zone (%)	Between adjacent zones (%)	Between zones 1 and 3 (%)
1	1 mth or less	40	40	100
1	1 to 3 mths			
1	3 to 6 mths			
1	6 to 12 mths			
2	1 to 2 yrs	30		
2	2 to 3 yrs			
2	3 to 4 yrs			
3	4 to 5 yrs	30	40	
3	5 to 7 yrs			
3	7 to 10 yrs			
3	10 to 15 yrs			
3	15 to 20 yrs			
3	Over 20 yrs			

(A) If a zone includes both risk-weighted long positions and risk-weighted short interest rate positions in different time-bands, the risk-weighted long positions and risk-weighted short positions in all of the time-bands within the zone are netted, resulting in a single net risk-weighted long or short position for each zone.

(B) An "intra-zone disallowance" is computed by multiplying the percent disallowance factors for each zone set out in Table C of this section by the smaller of the net risk-weighted long or net risk-weighted short positions within the zone, or if the positions are equal, a percentage of either position.

(C) The total intra-zone disallowance equals the sum of the absolute values of the individual intra-zone disallowances.

(D) Risk-weighted long and short positions are then netted between zone 1 and zone 2, between zone 2 and zone 3, and then zone 3 and zone 1.

(E) An "inter-zone disallowance" is calculated by multiplying the percent disallowance in Table C of this section by the smaller of the net long or short position eliminated by the inter-zone netting, or if the positions are equal, a percentage of either position.

(F) The total inter-zone disallowance equals the sum of the absolute values of the individual inter-zone disallowances.

(G) Lastly, the net risk-weighted long interest rate position or net risk-weighted short interest rate position remaining in the zones are summed to reach a single net risk-weighted long or net risk-weighted short.

(2) *Interest rate derivative contracts.* (i) Derivative contracts are converted into positions in the relevant underlying instrument and are included in the calculation of specific and general market risk capital charges as described in paragraphs (c) and (d) of this section. The amount to be included is the market value of the principal amount of the underlying or of the notional underlying. In the case of a futures contract on a corporate bond index, positions are included at the market value of the notional underlying portfolio of securities.

(ii) Futures and forward contracts (including forward rate contracts) are converted into a combination of a long position and short position in the notional security. The maturity of a futures contract or a forward rate contract is the period until delivery or exercise of the contract, plus the life of the underlying instrument.

(iii) Swaps are treated as two notional positions in the relevant instruments with appropriate maturities. The receiving side is treated as the long position and the paying side is treated as the short position. For example, an interest rate swap in which the registrant is receiving floating-rate interest and paying fixed is treated as a long position in a floating rate instrument with a maturity equivalent to the period until the next interest rate reset date and a short position in a fixed-rate instrument with a maturity equivalent to the remaining life of the swap.

(iv) For swaps that pay or receive a fixed or floating interest rate against some other reference price, for example, an equity index, the interest rate component is slotted into the appropriate repricing maturity category, with the long or short position attributable to the equity component being included in the equity framework set out in this section.

(v) Offsets of long and short positions (both actual and notional) are permitted in identical derivative instruments with exactly the same issuer, coupon, currency, and maturity before slotting these positions into time-bands. A matched position in a futures and its corresponding underlying may also be fully offset and, thus, excluded from the calculation, except when the futures comprises a range of deliverable instruments. No offsetting is allowed between positions in different currencies.

(vi) Offsetting positions in the same category of instruments can in certain circumstances be regarded as matched and treated by the swap dealer or major swap participant as a single net position which should be entered into the appropriate time-band. To qualify for this treatment the positions must be based on the same underlying instrument, be of the same nominal value, and be denominated in the same currency. The separate sides of different swaps also may be "matched" subject to the same conditions. In addition:

(A) For futures, offsetting positions in the notional or underlying instruments

to which the futures contract relates must be for identical instruments and the instruments must mature within seven days of each other;

(B) For swaps and forward rate contracts, the reference rate (for floating rate positions) must be identical and the coupon closely matched; and

(C) For swaps, forward rate contracts and forwards, the next interest reset date, or for fixed coupon positions or forwards the remaining maturity, must correspond within the following limits:

(*1*) If the reset (remaining maturity) dates occur within one month, then the reset (remaining maturity) dates must be on the same day;

(*2*) If the reset (remaining maturity) dates occur between one month and one year later, then the reset (remaining maturity) dates must occur within seven days of each other, or if the reset (remaining maturity) dates occur over one year later, then the reset (remaining maturity) dates must occur within thirty days of each other.

(3) *Equity Risk.* A swap dealer or major swap participant shall calculate a general market risk charge for equity risk on its proprietary positions equal to 8 percent of its net position in each national equity market. For each national equity market, the net position of the swap dealer or major swap participant equals the difference between the sum of the long positions and the sum of the short positions at current market value. Equity derivatives shall be included in this calculation as set forth in paragraph (d)(4) of this section.

(4) *Equity derivatives.* (i) Equity derivatives must be converted into the notional equity positions in the relevant underlying. For example, an equity swap in which a swap dealer or major swap participant is receiving an amount based on the change in value of one particular equity or equity index and paying a different index will be treated as a long position in the former and a short position in the latter.

(ii) Futures and forward contracts relating to individual equities should be reported as current market prices of the underlying. Futures relating to equity indices should be reported as the marked-to-market value of the notional underlying equity portfolio. Equity swaps are treated as two notional positions, with the receiving side as the long position and the paying side as the short position. If one of the legs involves receiving/paying a fixed or floating interest rate, the exposure should be slotted into the appropriate repricing maturity band for debt securities. Matched positions in each identical equity in each national market may be treated as offsetting and excluded from the capital calculation, with any remaining position included in the calculations for specific and general market risk. For example, a future in a given equity may be offset against an opposite cash position in the same equity.

(5) *Foreign Exchange Risk.* The swap dealer or major swap participant shall calculate a market risk charge for foreign exchange risk on its proprietary positions equal to:

(i) 8.0 percent of the sum of:

(A) The greater of the sum of the net open short positions or the sum of the net open long positions in each currency; and

(B) The net open position in gold, regardless of sign.

(ii) For purposes of the calculation in paragraph (d)(5)(i) of this section, the net open position in each currency and gold is the sum of:

(A) The net spot position determined by deducting all liabilities denominated in a currency (or gold) from all assets denominated in the same currency (or gold), including accrued interest earned but not yet received and accrued expenses, and

(B) All foreign exchange derivatives and any other item representing a profit or loss in foreign currencies. Forward currency positions should be valued at current spot market exchange rates.

(iii) In order to report the required charge in U.S. currency, the calculation of the net open position requires the nominal amount (or net present value) of the net open position in each foreign currency (and gold) to be converted at spot rates into the reporting currency.

(6) *Commodities risk.* The swap dealer or major swap participant shall calculate a market risk charge for the commodities risk of its proprietary positions. For purposes of this calculation, each long and short commodity position (spot and forward) is expressed in terms of the standard unit of measurement (such as barrels, kilos, or grams). Commodity derivative positions also are converted into notional positions. The open positions in each category of commodities are then converted at current spot rates into U.S. currency, with long and short positions offset to arrive at the net open position in each commodity. Positions in different categories of commodities may not be offset unless deliverable against each other. The total capital requirement for commodities risk is the sum of the following:

(i) 15.0 percent of the net open position, long or short, in each commodity, and

(ii) 3.0 percent of the swap dealer or major swap participant's gross positions, long plus short, in the particular commodity. In valuing gross positions in commodity derivatives for this purpose, a swap dealer or major swap participant should use the current spot price.

(7) *Option positions.* (i) A swap dealer or major swap participant is not required to deduct a capital charge for market risk if the swap dealer or major swap participant writes options that are hedged by perfectly matched long positions in exactly the same options.

(ii) Except for options for which no capital charge is required under paragraph of (d)(7)(i) of this section, a swap dealer or major swap participant shall calculate its market risk charges (both specific and general market) for option activities using the "delta-plus method". Under the delta plus method, a swap dealer or major swap participant shall include delta-weighted options positions within the appropriate measurement framework set forth in paragraphs (c) through (d)(6) of this section.

(iii) The delta-weighted option position is equal to the market value of the underlying instrument multiplied by the option delta. The delta represents the expected change in the option's price as a proportion of a change in the price of the underlying instrument. For example, an option whose price changes $1 for every $2 change in the price of the underlying instrument has a delta of 0.50.

(iv) In addition to the capital charges associated with the option's delta, each option position is subject to additional capital charges to reflect risks for the gamma (the change of the delta for a given change in the price of the underlying) and the vega (the sensitivity of the option price with respect to a change in volatility) for each such option position (including hedge positions). The option delta, and gamma and vega sensitivities shall be calculated according to the swap dealer or major swap participant's option pricing model and will be subject to Commission review. The capital requirement for delta risk, plus the additional capital charges for gamma and vega risks, are calculated as follows:

(A) *Options with debt instruments or interest rates as the underlying instrument.* The delta-weighted options positions are included in the specific risk calculations under paragraph (c) of this section, and also are slotted into the debt instrument time-bands in Table B of this section, using a two-legged approach requiring one entry at the time the underlying contract takes effect and

one at the time the underlying contract matures; and

(*1*) Floating rate instruments with caps or floors should be treated as a combination of floating rate securities and a series of European style options;

(*2*) For options such as caps and floors whose underlying instrument is an interest rate, the delta and gamma should be expressed in terms of a hypothetical underlying security;

(*3*) For gamma risk, for each time-band, net gammas that are negative are multiplied by the risk weights set out in Table D and by the square of the market value of the underlying instrument (net positive gammas may be disregarded);

(*4*) Table D is as set forth as follows:

TABLE D

Time-band	Modified duration	Assumed interest rate change (%)	Risk-weight for gamma (average assumed for time band)
Under 1 month	0.00	1.00	0.00000
1 up to 3 months	0.20	1.00	0.00020
3 up to 6 months	0.40	1.00	0.00080
6 up to 12 months	0.70	1.00	0.00245
1 up to 2 years	1.40	0.90	0.00794
2 up to 3 years	2.20	0.80	0.01549
3 up to 4 years	3.00	0.75	0.02531
4 up to 5 years	3.65	0.75	0.03747
5 up to 7 years	4.65	0.70	0.05298
7 up to 10 years	5.80	0.65	0.07106
10 up to 15 years	7.50	0.60	0.10125
15 up to 20 years	8.75	0.60	0.13781
Over 20 years	10.00	0.60	0.18000

(*5*) For volatility risk, the capital requirements for vega are calculated in each time-band assuming a proportional shift in volatility of ±25.0 percent; and

(*6*) The additional capital requirement for gamma and vega risk is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk for each time-band.

(B) *Options with equities as the underlying.* The delta-weighted option positions are included in the calculation of the specific risk charge under paragraph (c) of this section, and also are incorporated in the general market risk charge calculated under paragraph (d)(3) of this section, with individual equity issues and indices treated as separate underlyings; and

(*1*) For gamma risk, the net gammas that are negative for each underlying are multiplied by 0.72 percent (in the case of an individual equity) or 0.32 percent (in the case of an index as the underlying) and by the square of the market value of the underlying;

(*2*) For volatility risk, the capital requirement for vega is calculated for each underlying, assuming a proportional shift in volatility of ±25.0 percent; and

(*3*) The additional capital requirement for gamma and vega risk is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the individual capital requirements for vega risk.

(C) *Options on foreign exchange and gold positions.* The net delta (or delta-based) equivalent of the total book of foreign currency and gold options is incorporated into the measurement of the exposure in a single currency position as set forth in paragraph (d)(5) of this section; and

(*1*) For gamma risk, for each underlying exchange rate, net gammas that are negative are multiplied by 0.32 percent and by the square of the market value of the positions;

(*2*) For volatility risk, the capital requirements for vega are calculated for each currency pair and gold assuming a proportional shift in volatility of ±25.0 percent; and

(*3*) The additional capital requirement for gamma and vega risk is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

(D) *Options on commodities.* The delta-weighted positions are incorporated into the measure described in paragraph (d)(6) of this section; and

(*1*) For gamma risk, net gammas that are negative for each underlying are multiplied by 1.125 percent and by the square of the market value of the commodity;

(*2*) For volatility risk, a bank calculates the capital requirements for vega for each commodity assuming a proportional shift in volatility of ±25.0 percent; and

(*3*) The additional capital requirement for gamma and vega risk is the absolute value of the sum of the individual capital requirements for net negative gammas plus the absolute value of the sum of the individual capital requirements for vega risk.

(e) *Credit Risk.* The swap dealer or major swap participant shall compute an additional capital requirement for the credit risk of over-the-counter derivatives transactions that are not cleared in an amount equal to the sum of the following:

(1) A counterparty exposure charge in an amount equal to the sum of the following:

(i) The net replacement value in the account of each counterparty that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default; and

(ii) For a counterparty not otherwise described in paragraph (e)(1)(i) of this section, the credit equivalent amount of the swap dealer or major swap participant's exposure to the counterparty, minus collateral values as set forth in this section, multiplied by a credit risk factor of 50 percent or a credit risk factor computed under paragraph (e)(1)(iii) of this section, multiplied by 8 percent;

(iii) Counterparties may be rated by the swap dealer or major swap participant, or by an affiliated bank or affiliated broker-dealer of the swap dealer or major swap participant, upon

approval by the Commission on application by the swap dealer or major swap participant. The application will specify which internal ratings will result in application of a 20 percent risk weight, 50 percent risk weight, or 150 percent risk weight. Based on the strength of the applicant's internal credit risk management system, the Commission may approve the application. The swap dealer or major swap participant must make and keep current a record of the basis for the credit rating for each counterparty. The records must be maintained in accordance with § 1.31 of this chapter.

(2) A concentration charge by counterparty in an amount equal to 50 percent of the amount of the current exposure to the counterparty in excess of 5 percent of the tangible net equity of the swap dealer or major swap participant and a portfolio concentration charge of 100 percent of the amount of the swap dealer or major swap participant's aggregate current exposure for all counterparties in excess of 50 percent of the tangible net equity of the swap dealer or major swap participant.

(f) *Calculation of the credit equivalent amount.* The credit equivalent amount of a swap dealer or major swap participant's exposure to a counterparty is the sum of the swap dealer or major swap participant's current exposure to the counterparty, and the swap dealer or major swap participant's potential future exposure to the counterparty.

(g) The current exposure of the swap dealer or major swap participant to a counterparty is calculated as follows:

(1) For a single over-the-counter position, the current exposure is the greater of the mark-to-market value of the over-the-counter position or zero.

(2) For multiple over-the-counter positions, the current credit exposure is the greater of:

(i) The net sum of all positive and negative mark-to-market values of the individual over-the-counter positions, subject to permitted netting pursuant to a qualifying master netting agreement; or

(ii) Zero.

(h) The potential future exposure of the swap dealer or major swap participant is calculated as follows:

(1) For a single over-the counter position, the potential future exposure, including an over-the-counter position with a negative mark-to-market value, is calculated by multiplying the notional principal amount of the position by the appropriate conversion factor in Table E of this section. For purposes of this calculation, the swap dealer or major swap participant must use the apparent or stated notional principal amount multiplied by any multiplier in the over-the-counter position. For exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency. The potential future exposure of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums. For an over-the-counter derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract. For an over-the-counter derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

TABLE E

Remaining maturity	Interest rate	Foreign exchange rate and gold	Credit	Equity	Precious metals (except gold)	Other
One year or less	0.00	0.01	0.10	0.06	0.07	0.10
Over one to five years	0.005	0.05	0.10	0.08	0.07	0.12
Over five years	0.015	0.075	0.10	0.10	0.08	0.15

(2) For multiple over-the-counter positions that are subject to a qualifying master netting agreement, the swap dealer or major swap participant shall compute its potential future exposure in accordance with the following formula: Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(i) Agross equals the sum of the potential future exposure for each individual over-the-counter position subject to the qualifying master netting agreement; and

(ii) NGR equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures of all individual over-the-counter derivative contracts subject to the qualifying master netting agreement.

(i) *Netting agreements.* In computing its credit equivalent amount pursuant to paragraph (f) of this section, a swap dealer or major swap participant may net gross receivables and gross payables to and from a single counterparty if the swap dealer or major swap participant has entered into a netting agreement with the counterparty that meets the following criteria:

(1) The netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings;

(2) The gross receivables and gross payables that are subject to the netting agreement with a counterparty can be determined at any time; and

(3) For internal risk management purposes, the swap dealer or major swap participant monitors and controls its exposure to the counterparty on a net basis.

(j) *Collateral.* (1) Subject to the haircuts specified in paragraph (j)(2) of this section, a swap dealer or major swap participant may reduce its credit risk equivalent computed under paragraph (f) of this section to the extent of the market value of collateral pledged to and held by the swap dealer or major swap participant to secure an over-the-counter position. The collateral is subject to the following requirements:

(i) The collateral must be in the swap dealer or major swap participant's physical possession or control; *Provided, However,* collateral may include collateral held in independent third party accounts as provided under part 23 of this chapter;

(ii) The collateral must meet the requirements specified in a credit support agreement meeting the requirements of § 23.151 of this part; and

(iii) If the counterparty is a swap dealer, major swap participant or financial entity as defined in § 23.150 of this part:

(A) The collateral must be financial collateral that is liquid and transferable; marked-to-market each day, and subject

to a daily maintenance margin requirement;

(B) The collateral must be capable of being liquidated promptly by the swap dealer or major swap participant without intervention by any other party;

(C) The collateral must be subject to an agreement that is legally enforceable by the swap dealer or major swap participant against the counterparty and any other parties to the agreement;

(D) The collateral cannot consist of securities issued by the counterparty or a party related to the swap dealer or major swap participant or to the counterparty; and

(E) The collateral cannot be used in determining the credit rating of the counterparty.

(2) A swap dealer or major swap participant must reduce the market value of the counterparty's collateral used to reduce the swap dealer's or major swap participant's credit risk equivalent amount computed under paragraph (f) of this section by:

(i) Applying the market haircuts specified in § 1.17(c)(5) of this chapter, and a further deduction of 8 percent of the market value of the collateral when the settlement currency of the interest rate position and collateral currency are not the same; or

(ii) where the collateral has been received from a counterparty that is not a swap dealer, major swap participant, or a financial entity as defined in § 23.150 of this part, applying the haircuts required pursuant to a credit support agreement meeting the requirements of § 23.151.

(k) *Sample Calculation of General Market Risk for Debt Instruments Using the Maturity Method.* (1) The following positions are slotted into a maturity ladder as shown below, which uses the risk weights specified in Table B of this section:

(i) Qualifying bond, $13.33mn market value, remaining maturity 8 years, coupon 8 percent;

(ii) Government bond, $75mn market value, remaining maturity 2 months, coupon 7 percent;

(iii) Interest rate swap, $150 mn, bank receives floating rate interest and pays fixed, next interest reset after 12 months, remaining life of swap is 8 years (The position should be reported as the market value of the notional underlying. Depending on the current interest rate, the market value of each leg of the swap (i.e. the 8 year bond and the 9 months floater) can be either higher or lower than the notional amount. For sake of simplicity the example assumes that the current interest rate is identical with the one the swap is based on.)

(iv) Long position in interest rate future, $50mn, delivery date after 6 months, life of underlying government security is 3.5 years (assumes the current interest rate is identical to the one the futures is based on).

Zone	Time-band and position	Risk weight %	Risk-weighted position	Net time-band positions	Net zone positions
1	0–1 mth	0.00			
	1–3 mth Long 75 Gov. bond	0.20	Long 0.15	Long 0.15	Long 1.00.
	3–6 mth Short 50 Future	0.40	Short 0.20	Short 0.20.	
	6–12 mths Long 150 Swap	0.70	Long 1.05	Long 1.05.	
2	1–2 yrs	1.25			
	2–3 yrs	1.75			
	3–4 yrs Long 50 Future	2.25	Long 1.125	Long 1.125	Long 1.125.
3	4–5 yrs	2.75			
	5–7 yrs	3.25			
	7–10 yrs Short 150 Swap, Long 13.33 Qual Bond.	3.75	Short 5.625, Long 0.050	Short 5.125	Short 5.125.
	10–15 yrs	4.50			
	15–20 yrs	5.25			
	Over 20 yrs	6.00			

(2) A vertical disallowance is calculated for time-band 7–10 years, and equals 10 percent of the matched positions in the time-band—$10.0 \times 0.5 = 0.05$ ($50,000).

(3) A horizontal disallowance is calculated for zone 1, and equals 40 percent of the matched positions in the zone—$40.0 \times 0.20 = 0.80$ ($80,000). The remaining net position in Zone 1 equals +1.00.

(4) A horizontal disallowance is calculated for adjacent zones 2 and 3. It equals 40 percent of the matched positions between the zones—$40.0 \times 1.125 = 0.45$ (450,000). The remaining position in zone 3 equals -4.00.

(5) A horizontal disallowance is calculated between zones 1 and 3. It equals 100 percent of the matched positions between the zones—$100 \times 1.00 = 1.00$ (1,000,000).

(6) The remaining net open position equals 3.00 ($3,000,000). The total capital requirement for general market risk for this portfolio equals:

The vertical disallowance	$50,000
Horizontal disallowance in zone 1	80,000
Horizontal disallowance—zones 2 and 3	450,000
Horizontal disallowance—zones 1 and 3	1,000,000
Overall net open position	3,000,000
Total requirement for general market risk	4,580,000

(l) *Sample Calculation for Delta-Plus Method for Options.* (1) Assume the swap dealer or major swap participant has a European short call option on a commodity with an exercise price of 490 and a market value of the underlying 12 months from the expiration of the option at 500; a risk-free interest rate at 8 percent per annum, and the volatility at 20 percent. The current delta for this position is according to the Black-Scholes formula -0.721 (that is, the price of the option changes by -0.721 if the price of the underlying moves by 1). The gamma is -0.0034 (that is, the delta changes by -0.0034 from -0.721 to -0.7244 if the price of the underlying moves by 1). The current value of the option is 65.48.

(2) The first step under the delta-plus method is to multiply the market value of the commodity by the absolute value of the delta: $500 \times 0.721 = 360.5$. The delta-weighted position is then incorporated into the measure described for general market risk for commodities. If no other positions in the commodity exist, the delta-weighted position is multiplied by 0.15 to calculate the capital requirement for delta: 360.5 times 0.15 = 54.075.

(3) The capital requirement for gamma is calculated according to the Taylor expansion by multiplying the absolute

value of the assumed gamma of −0.0034 by 1.125 percent and by the square of the market value of the underlying: $0.0034 \times 0.01125 \times 500^2 = 9.5625$.

(4) The capital requirement for vega is calculated next. The assumed current (implied) volatility is 20 percent. Since only an increase in volatility carries a risk of loss for a short call option, the volatility has to be increased by a relative shift of 25 percent. This means that the vega capital requirement has to be calculated on the basis of a change in volatility of 5 percentage points from 20 percent to 25 percent in this example. According to the Black-Scholes formula used here, the vega equals 168. Thus, a 1 percent or 0.01 increase in volatility increases the value of the option by 1.68. Accordingly, a change in volatility of 5 percentage points increases the value: $5 \times 1.68 = 8.4$. This is the capital requirement for vega risk.

(m) *Summary of Treatment for Interest Rate Derivatives.* (1) The following chart summarizes the application of specific risk and general market risk charges for specific types of interest rate derivatives.

Instrument	Specific risk charge	General market risk charge
Exchange-Traded Future:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates (e.g. LIBOR)	No	Yes, as two positions.
OTC Forward:		
Government security	No	Yes, as two positions.
Corporate debt security	Yes	Yes, as two positions.
Index on short-term interest rates.	No	Yes, as two positions.
FRAs, Swaps	No	Yes, as two positions.
Forward foreign exchange	No	Yes, as one position in each currency.
Options:		
Government security	No.	
Corporate debt security	Yes	General market risk charge for each type of transaction, using the Delta-plus method (gamma and vega receive separate capital charges).
Index on short-term interest rates	No.	

(2) The chart provided in paragraph (m)(1) of this section is provided as a summary only. The requirements for specific risk and general market risk charges applicable to interest rate derivatives are set forth in paragraphs (a) through (d) of this section.

§ 23.105 Maintenance of minimum financial requirements by swap dealers and major swap participants.

(a) Each swap dealer or major swap participant who is subject to the minimum capital requirements under § 23.101 of this part and who knows or should have known that its capital at any time is less than the minimum required by § 23.101 of this part, must:

(1) Give telephonic notice, to be confirmed in writing by facsimile notice, that the swap dealer's or major swap participant's capital is less than that required by § 23.101 of this part. The notice must be given immediately after the swap dealer or major swap participant knows or should know that its capital is less than that required by § 23.101 of this part; and

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the swap dealer's or major swap participant's capital condition as of any date such person's capital is less than the minimum required. The swap dealer or major swap participant must provide similar documentation for other days as the Commission may request.

(b) Each swap dealer or major swap participant who is subject to the minimum capital requirements under § 23.101 of this part and who knows or should have known that its capital at any time is less than 110 percent of its minimum capital requirement as determined under § 23.101 of this part, must file written notice to that effect within 24 hours of such event.

(c) Each swap dealer or major swap participant who is subject to capital rules established by a prudential regulator, or has been designated a systemically important financial institution by the Financial Stability Oversight Council and is subject to capital requirements imposed by the Board of Governors of the Federal Reserve System, must provide immediate written notice transmitted by facsimile if it fails to maintain compliance with the minimum capital requirements established by the prudential regulator or the Board of Governors of the Federal Reserve System.

(d) Upon the request of the Commission, each swap dealer or major swap participant who is subject to capital rules established by a prudential regulator, or has been designated a systemically important financial institution by the Financial Stability Oversight Council and is subject to capital requirements imposed by the Board of Governors of the Federal Reserve System must provide the Commission with copies of its capital computations for any periods of time specified by the Commission. The capital computations must be computed in accordance with the requirements of the swap dealer's or major swap participant's prudential regulator, and must include all supporting schedules and other documentation.

(e) If a swap dealer or major swap participant at any time fails to make or to keep current the books and records required by these regulations, such swap dealer or major swap participant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(f) A swap dealer or major swap participant that is subject to the minimum capital requirements set forth in § 23.101 of this part, must provide written facsimile notice of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to § 23.105 of this part. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in tangible net equity of

20 percent or more, notice must be provided within two business days of the event or series of events causing the reduction; and

(2) If the equity capital of the swap dealer or major swap participant would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess net tangible equity of 30 percent or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however,* That the provisions of paragraphs (f)(1) and (2) of this section do not apply to any futures or swaps transaction in the ordinary course of business between a swap dealer or major swap participant and any affiliate where the swap dealer or major swap participant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a swap dealer or major swap participant, the Director of the Division of Clearing and Intermediary Oversight or the Director's designee may require that the swap dealer or major swap participant provide, within three business days from the date of the request or such shorter period as the Director or designee may specify, such other information as the Director or designee determines to be necessary based upon market conditions, reports provided by swap dealer or major swap participant, or other available information.

(g) Every notice and written report required by this section to be filed by a swap dealer or major swap participant shall be filed with the regional office of the Commission with jurisdiction over the state in which the swap dealer's or major swap participant's principal place of business is located, as set forth in § 140.02 of this chapter, and with the registered futures association of which the swap dealer or major swap participant is a member. In addition, every notice and written report required to be given by this section must also be filed with the Chief Accountant of the Division of Clearing and Intermediary Oversight at the Commission's principal office in Washington, DC.

§ 23.106 Financial recordkeeping and reporting requirements for swap dealers and major swap participants.

(a)(1) Except as provided in paragraph (a)(2) of this section, each registered swap dealer or major swap participant must comply with the requirements set forth in paragraphs (b) through (j) of this section.

(2) The requirements in paragraphs (b) through (j) of this section do not apply to any swap dealer or major swap participant that:

(i) Is subject to the capital requirements of a prudential regulator;

(ii) Has been designated a systemically important financial institution by the Financial Stability Oversight Council and is subject to supervision by the Board of Governors of the Federal Reserve System; or

(iii) Is registered as a futures commission merchant.

(b) Each swap dealer or major swap participant shall prepare and keep current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting its asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all its asset, liability and capital accounts are classified in accord with generally accepted accounting principles as established in the United States, and as otherwise may be necessary for the capital calculations required under § 23.101. Such records must be maintained in accordance with § 1.31 of this chapter.

(c)(1) Each swap dealer and major swap participant shall file financial reports meeting the requirements in paragraph (c)(2) of this section as of the close of business each month. Such financial reports must be filed no later than 17 business days after the date for which the report is made.

(2) The monthly financial reports must be prepared in the English language and be denominated in United States dollars. The monthly financial reports shall include a statement of financial condition, a statement of income/loss, a statement reconciling the net equity in the statement of financial condition to the firm's tangible net equity, a schedule detailing, as applicable under § 23.101, the calculation of the firm's minimum tangible net equity requirement or its minimum risk-based capital ratios requirements, and showing the excess or deficiency in its regulatory capital after subtracting the minimum tangible net equity requirement from its tangible net equity, or after comparing its risk-based capital ratios to its minimum risk-based capital ratios. The monthly report and schedules must be prepared in accordance with generally accepted accounting principles as established in the United States.

(d)(1) Each swap dealer and major swap participant shall file annual audited financial reports certified in accordance with paragraph (d)(2) of this section, and including the information specified in paragraph (d)(3) of this section, as of the close of its fiscal year no later than 90 days after the close of the swap dealer's and major swap participant's fiscal year.

(2) The annual audited financial report shall be certified in accordance with the provisions of paragraphs (a) through (e) of § 1.16 of this chapter: *Provided, however,* that for purposes of application of the provisions of § 1.16 to swap dealers and major swap participants, the term "§ 23.101" shall be substituted for the term "§ 1.17," and the terms "swap dealer" or "major swap participant" shall be substituted for the term "futures commission merchant," as appropriate.

(3) The annual audited financial reports shall be prepared in accordance with generally accepted accounting principles as established in the United States, be prepared in the English language, and denominated in United States dollars. The annual audited financial reports must include the following:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), cash flows, and changes in ownership equity for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made;

(iii) Appropriate footnote disclosures;

(iv)(A) If the swap dealer or major swap participant must comply with capital requirements set forth in § 23.101(a)(1) of this part, a schedule including the swap dealer's or major swap participant's net equity; its intangible assets; its minimum tangible net equity; its minimum tangible net equity requirement; and the excess or deficiency in its regulatory capital after subtracting the minimum tangible net equity requirement from its tangible net equity; or

(B) If the swap dealer or major swap participant must comply with capital requirements set forth in § 23.101(a)(2) of this part, a schedule including the swap dealer's or major swap participant's minimum risk-based capital ratio requirements as calculated using requirements set forth in 12 CFR.

part 225, and appendices thereto, as if the subsidiary itself were a U.S. bank-holding company; its risk-based capital ratios; and the excess or deficiency in its regulatory capital after comparing its risk-based capital ratios to its minimum risk-based capital ratio requirements.

(v) Such further material information as may be necessary to make the required statements not misleading.

(e) A registered swap dealer or major swap participant may not change its fiscal year from that used in its most recent report filed under paragraph (c) or (d) of this section unless it has requested and received written approval for the change from a registered futures association of which it is a member.

(f) Attached to each financial report filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the financial report is true and correct. The individual making such oath or affirmation must be: If the swap dealer or major swap participant is a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, the chief executive officer or chief financial officer; and, if a limited liability company or limited liability partnership, the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(g) From time to time the Commission may, by written notice, require any swap dealer or major swap participant to file financial or operational information on a daily basis or at such other times as may be specified by the Commission. Such information must be furnished in accordance with the requirements included in the written Commission notice.

(h) *Procedures for filing with Commission.* (1) Unless filed electronically as permitted under paragraph (h)(2) of this section, all filings made under this section must be addressed to, and received at, the location of the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located as set forth in § 140.02 of this chapter.

(2) All filings of financial reports made pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the swap dealer or major swap participant has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the swap dealer or major swap participant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. In the case of a financial report required under paragraphs (c), (d), or (g) of this section and filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in paragraph (f) of this section.

(i) *Public availability of reports.* (1) Financial information required to be filed pursuant to this section, and not otherwise publicly available, will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (i)(2) of this section.

(2) The following information will be publicly available:

(i) As applicable, the amounts calculated by the swap dealer or major swap participant as its tangible net equity; its minimum tangible net equity requirement; its tangible net equity in excess of its minimum tangible net equity requirement; its risk-based capital ratios; and the excess or deficiency in its regulatory capital after comparing its risk-based capital ratios to its minimum risk-based capital ratio requirements.

(ii) The opinion of the independent public accountant in the certified annual financial reports.

(3) All information that is exempt from mandatory public disclosure under paragraph (i)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by the National Futures Association and by any other person to whom the Commission believes disclosure of such information is in the public interest.

§§ 23.107–23.149 [Reserved]

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

7. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

8. Amend § 140.91 by revising the section heading and adding paragraphs (a)(9) through (15) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(9) All functions reserved to the Commission in § 23.101(c)(2) of this chapter, with the concurrence of the General Counsel or his or her designee;

(10) All functions reserved to the Commission in § 23.103(d) of this chapter, with the concurrence of the General Counsel or his or her designee;

(11) All functions reserved to the Commission in § 23.105(a)(2) and (d) of this chapter, with the concurrence of the General Counsel or his or her designee;

(12) All functions reserved to the Commission in § 23.155(b)(4)(ii), (iii) and (c)(4) of this chapter, with the concurrence of the General Counsel or his or her designee;

(13) All functions reserved to the Commission in § 23.156(c)(1) and (2) of this chapter, with the concurrence of the General Counsel or his or her designee;

(14) All functions reserved to the Commission in § 23.157(d) of this chapter, with the concurrence of the General Counsel or his or her designee; and

(15) All functions reserved to the Commission in § 23.158(c) of this chapter, with the concurrence of the General Counsel or his or her designee.

* * * * *

Issued in Washington, DC, on April 27, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Capital Requirements of Swap Dealers and Major Swap Participants—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers and Chilton voted in the affirmative; Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking to establish capital requirements for nonbank swap dealers and major swap participants. The Dodd-Frank Act requires capital requirements to help ensure the safety and soundness of swap dealers and major swap participants. Capital rules help protect commercial end-users and other market participants by requiring that dealers have sufficient capital to stand behind their obligations with such end-users and market participants. The proposal fulfills the Dodd-Frank Act's mandate in Section 731 to establish capital rules for all registered swap dealers and major swap participants that are not banks, including nonbank subsidiaries of bank holding companies.

The proposed rule addresses capital requirements for swap dealers and major swap participants in three different categories: (1) If they are an futures commission merchants (FCMs); 2) if they are subsidiaries of bank holding companies or systemically important financial institutions; or 3) if they are neither.

With regard to dealers that also are FCMs, generally speaking, the Commission's existing capital rules for FCMs would apply. This is to ensure that FCMs have sufficient capital to continue to carry and clear customer swaps and futures transactions cleared by a DCO.

The proposed rule would require dealers that are subsidiaries of bank holding companies or that have been designated as systemically important financial institutions by the Financial Stability Oversight Council (FSOC) to follow the rules set by the prudential regulators. For instance, a subsidiary of a U.S. bank holding company would have to comply with the capital requirements set by the Federal Reserve Board as if the subsidiary itself were a U.S. bank holding company. This is intended to prevent regulatory arbitrage and ensure consistency among capital regimes for those entities that are regulated by prudential regulators.

For those swap dealers and major swap participants that are not regulated for capital by a prudential capital and not FCMs, part of a bank holding company or a systemically important financial institution, the proposed rule departs from bank capital rules. It takes into consideration that these dealers are likely to have different balance sheets from those financial institutions that traditionally have been subject to prudential supervision. Such entities would be required to maintain a minimum level of tangible net equity greater than $20 million plus a measurement for market risk and a measurement for credit risk. This market risk and credit risk would be scaled to the dealers' activities and be measured based upon swaps activity and related hedges. The proposal would allow such firms to recognize as part of their capital fixed assets and other assets that traditionally have not been recognized by prudential regulators.

I also support the proposed rulemaking's financial condition reporting requirements that relate generally to capital and other matters. These reporting requirements are comparable to existing requirements for FCMs and will facilitate ongoing financial oversight of these entities.

CFTC staff worked very closely with prudential regulators to establish these capital requirements that are comparable to the maximum extent practicable. Staff also consulted with the SEC and with international authorities. The rule benefited from the CFTC and SEC staff roundtable on capital and margin requirements where we received significant input from the public.

Note: The following exhibit also will not appear in the Code of Federal Regulations.

BILLING CODE P

Exhibit A

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM

STATEMENT OF CLEARED SWAPS CUSTOMER SEGREGATION REQUIREMENTS AND FUNDS IN CLEARED SWAPS CUSTOMER ACCOUNTS UNDER 4D(F) OF THE CEA

Cleared Swaps Customer Requirements

1. Net ledger balance				
A. Cash			$ 0	X500
B. Securities (at market)			$ 0	X510
2. Net unrealized profit (loss) in open cleared swaps			$ 0	X520
3. Cleared OTC derivatives options				
A. Market value of open cleared OTC derivatives option contracts purchased			$ 0	X530
B. Market value of open cleared OTC derivatives option contracts granted (sold)			$ 0	X540
4. Net equity (deficit) (add lines 1, 2, and 3)			$ 0	X550
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 0	X560		
Less: amount offset by customer owned securities	$ 0	X570	$ 0	X580
6. Amount required to be segregated for cleared swaps customers (add lines 4 and 5)			$ 0	X590

Funds in Cleared Swaps Customer Segregated Accounts

7. Deposited in cleared swaps customer segregated accounts at banks		
A. Cash	$ 0	X600
B. Securities representing investments of cleared swaps customers' funds (at market)	$ 0	X610
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ 0	X620
8. Margins on deposit with derivatives clearing organizations in cleared swaps customer segregated accounts		
A. Cash	$ 0	X630
B. Securities representing investments of cleared swaps customers' funds (at market)	$ 0	X640
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ 0	X650
9. Net settlement from (to) derivatives clearing organizations	$ 0	X660
10. Cleared OTC derivatives options		
A. Value of open cleared OTC derivatives long option contracts	$ 0	X670
B. Value of open cleared OTC derivatives short option contracts	$ 0	8680
11. Net equities with other FCMs		
A. Net liquidating equity	$ 0	X690
B. Securities representing investments of cleared swaps customers' funds (at market)	$ 0	X700
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ 0	X710
12. Cleared swaps customer funds on hand (describe:)	$ 0	X715
13. Total amount in cleared swaps customer segregation (add lines 7 through 12)	$ 0	X720
14. Excess (deficiency) funds in cleared swaps customer segregation (subtract line 6 from line 13)	$ 0	X730

[FR Doc. 2011–10881 Filed 5–11–11; 8:45 am]

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S. 307/P.L. 112–11
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S.J. Res. 8/P.L. 112–12
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