FEDERAL REGISTER

Vol. 76 Wednesday,
No. 71 April 13, 2011

Pages 20489–20834

OFFICE OF THE FEDERAL REGISTER

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 10, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 76, No. 71
Wednesday, April 13, 2011

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No. HS–RM–09–835]

RIN 1992–AA–45

Occupational Radiation Protection

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the values in appendix C to its Occupational Radiation Protection requirements. The derived air concentration values for air immersion are calculated using several parameters. One of these, exposure time, is better represented by the hours in the workday, rather than the hours in a calendar day, and is therefore used in the revised calculations.

DATES: This rule is effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Judith Foulke, U.S. Department of Energy, Office of Worker Safety and Health Policy, 1000 Independence Avenue, SW., Washington, DC 20585; (301) 903–5865, e-mail: *Judy.Foulke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The requirements in title 10, Code of Federal Regulations, part 835 (10 CFR part 835), *Occupational Radiation Protection,* are designed to protect the health and safety of workers at Department of Energy (DOE) facilities. One situation that must be addressed is the exposure of workers to radioactive material dispersed in the air. Based on calculations involving doses to the organs of the body, levels of contamination in the air that will not cause the dose limits for workers to be exceeded are established for specified radionuclides. These values are given in appendix C. DOE first published a final rule on December 14, 1993, (58 FR 65485), amending 10 CFR part 835. In the June 8, 2007, (72 FR 31903) amendment to part 835, DOE revised the values in appendix C to part 835, *Derived Air Concentration (DAC) for Workers from External Exposure during Immersion in a Cloud of Airborne Radioactive Material.* The calculations done for the 2007 amendment were based on a 24-hour day. However, to be consistent with other occupational exposure scenarios, such as those used in developing the appendix A DACs, an 8-hour per day exposure scenario is more reasonable.

DOE proposed amending the values in appendix C to take account of the 8-hour per day exposure scenario on January 25, 2011 (76 FR 4258). Today's final rule modifies 10 CFR part 835 appendix C values resulting from calculations using an 8-hour day.

II. Discussion of Changes to 10 CFR 835

The values for air immersion derived air concentrations in the present part 835 are based on a 24-hour day. Because the work day is 8 hours long, it was decided to base calculations of air immersion derived concentrations on an 8-hour day for workers occupationally exposed.

DOE received two comments from one commenter. The commenter stated that the derived conversion factors differed by a factor of 20 billion to 70 billion. DOE noted that values calculated in Bq/m^3 and in μCi/L differ by a factor of 37 billion, but use of truncated numbers explained the difference. The commenter stated that the half-life of Kr-77 was wrong. DOE agreed with the correct value and replaced the incorrect value.

A second commenter stated that the change in calculation for exposure time from calendar day hours to workday hours will lessen the amount of protection provided to employees. The commenter incorrectly stated that the effects of the radiation will continue after the employees have gone home. These radionuclides in appendix C are inert gases and are not absorbed by the body; they affect the worker only while immersed in a cloud of airborne radioactivity.

A third commenter agreed with DOE's approach.

III. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 835

Federal buildings and facilities, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Occupational safety and health, Radiation protection, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 28, 2011.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

Accordingly, for the reasons set forth in the preamble, part 835 of Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 835—OCCUPATIONAL RADIATION PROTECTION

■ 1. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201, 7191; 50 U.S.C. 2410.

■ 2. In appendix C to part 835, the table at the end of paragraph c. is removed and a new table is added to read as follows:

Appendix C to Part 835—Derived Air Concentration (DAC) for Workers From External Exposure During Immersion in a Cloud of Airborne Radioactive Material

* * * * *

c. * * *

AIR IMMERSION DAC

Radionuclide	Half-life	(μCi/mL)	(Bq/m^3)
Ar-37	35.02 d ...	3E+00	1E+11
Ar-39	269 yr	1E–03	5E+07
Ar-41	1.827 h ...	3E–06	1E+05
Kr-74	11.5 min	3E–06	1E+05
Kr-76	14.8 h	1E–05	3E+05
Kr-77	74.7 min	4E–06	1E+05
Kr-79	35.04 h ...	1E–05	6E+05
Kr-81	2.1E+05 yr.	7E–04	2E+07
Kr-83m	1.83 h	7E–02	2E+09
Kr-85	10.72 yr ..	7E–04	2E+07
Kr-85m	4.48 h	2E–05	1E+06
Kr-87	76.3 min	4E–06	1E+05
Kr-88	2.84 h	1E–06	7E+04

AIR IMMERSION DAC—Continued

Radio-nuclide	Half-life	(μCi/mL)	(Bq/m³)
Xe-120	40.0 min	1E–05	4E+05
Xe-121	40.1 min	2E–06	8E+04
Xe-122	20.1 h	8E–05	3E+06
Xe-123	2.14 h	6E–06	2E+05
Xe-125	16.8 h	1E–05	6E+05
Xe-127	36.406 d	1E–05	6E+05
Xe-129m ..	8.89 d	2E–04	7E+06
Xe-131m ..	11.84 d ...	5E–04	1E+07
Xe-133	5.245 d ...	1E–04	5E+06
Xe-133m ..	2.19 d	1E–04	5E+06
Xe-135	9.11 h	1E–05	6E+05
Xe-135m ..	15.36 min	1E–05	3E+05
Xe-138	14.13 min	3E–06	1E+05

* * * * *

[FR Doc. 2011–8836 Filed 4–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

Community Reinvestment

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 500 to 599, revised as of January 1, 2011, on page 278, in § 563e.12, the heading of paragraph (u) and paragraph (u)(1) are corrected to read as follows:

§ 563e.12 Definitions.

* * * * *

(u) *Small savings association—(1) Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.122 billion. *Intermediate small savings association* means a small savings association with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 billion as of December 31 of either of the prior two calendar years.

* * * * *

[FR Doc. 2011–8795 Filed 4–12–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. SW026; Special Conditions No. 27–026–SC]

Special Conditions: Eurocopter France Model AS350B Series, AS350D, and EC130 Helicopters, Installation of a Hoh Aeronautics, Inc. Autopilot/ Stabilization Augmentation System (AP/SAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the modification of the Eurocopter France (Eurocopter) model AS350B series, AS350D, and EC130 helicopters. These model helicopters will have novel or unusual design features when modified by installing the Hoh Aeronautics, Inc. (Hoh) complex autopilot/stabilization augmentation system (AP/SAS) that has potential failure conditions with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. These special conditions contain the added safety standards the Administrator considers necessary to ensure the failures and their effects are sufficiently analyzed and contained.

DATES: The effective date of these special conditions is March 31, 2011. We must receive your comments by June 13, 2011.

ADDRESSES: You may send your comments by e-mail to: *john.vanhoudt@faa.gov;* by mail to: Federal Aviation Administration, Rotorcraft Directorate, Attn: John VanHoudt (ASW–111), Special Conditions Docket No. SW026, 2601 Meacham Blvd., Fort Worth, Texas 76137; or by delivering your comments to the Rotorcraft Directorate at the indicated address. You must mark your comments: Docket No. SW026. You can inspect comments in the special conditions docket on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m., in the Rotorcraft Directorate.

FOR FURTHER INFORMATION CONTACT: John VanHoudt, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5167; facsimile (817) 222–5961; or e-mail to *john.vanhoudt@faa.gov.*

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The substance of these special conditions has been subjected to the notice and comment period previously and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Further, a delay in the effective date of these special conditions would significantly delay issuance of the design approval and thus delivery of the helicopter, which is imminent. Therefore, the FAA has determined that prior public notice and comment are unnecessary, impracticable, and contrary to the public interest, and finds good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Comments Invited

While we did not precede this with a notice of proposed special conditions, we invite interested people to take part in this action by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will file in the special conditions docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

If you want us to let you know we received your mailed comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 5, 2010, Hoh submitted an application to the FAA's Los Angeles

Aircraft Certification Office (LA ACO) for a supplemental type certificate (STC) to install an AP/SAS on the Eurocopter model AS350B, AS350BA, AS350B1, AS350B2, AS350B3 (AS350B series), AS350D, and EC130 helicopters. The Eurocopter model AS350B series, AS350D, and EC130 helicopters are 14 CFR part 27 Normal category, single turbine engine, conventional helicopters designed for civil operation. These helicopter models are capable of carrying up to six passengers with one pilot, and have a maximum gross weight of approximately 5,290 pounds, depending on the model configuration. The major design features include a 3-blade, fully articulated main rotor, an anti-torque tail rotor system, a skid landing gear, and a visual flight rule (VFR) basic avionics configuration. Hoh proposes to modify these model helicopters by installing a two-axis AP/SAS.

Type Certification Basis

Under 14 CFR 21.115, Hoh must show that the Eurocopter model AS350B series, AS350D, and EC130 helicopters, as modified by the installed AP/SAS, continue to meet the 14 CFR 21.101 standards. The baseline of the certification basis for the unmodified Eurocopter model AS350B series, AS350D, and EC130 helicopters is listed in Type Certificate Number H9EU. Additionally, compliance must be shown to any applicable equivalent level of safety findings, exemptions, and special conditions, prescribed by the Administrator as part of the certification basis.

If the Administrator finds the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Eurocopter model AS350B series, AS350D, and EC130 helicopters because of a novel or unusual design feature, special conditions are prescribed under § 21.101(d).

In addition to the applicable airworthiness regulations and special conditions, Hoh must show compliance of the AP/SAS STC-altered Eurocopter model AS350B series, AS350D, and EC130 helicopters with the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Hoh AP/SAS incorporates novel or unusual design features, for installation in a Eurocopter model AS350B series, AS350D, and EC130 helicopter, Type Certificate Number H9EU. This AP/SAS performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopters, are more severe than those envisioned by the present rules.

Discussion

The effect on safety is not adequately covered under § 27.1309 for the application of new technology and new application of standard technology. Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions.

To comply with the provisions of the special conditions, we require that Hoh provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by a functional hazard assessment (FHA) and a preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This will ensure that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on civil airborne Systems and Equipment).

These special conditions require that the AP/SAS installed on a Eurocopter model AS350B series, AS350D, or EC130 helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Applicability

These special conditions are applicable to the Hoh AP/SAS installed as an STC approval, in Eurocopter model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, and EC130 helicopters, Type Certificate Number H9EU.

Conclusion

This action affects only certain novel or unusual design features for a Hoh AP/SAS STC installed on the specified model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the model helicopters listed in the "Applicability" section.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the Hoh Aeronautics, Inc. (Hoh) supplemental type certificate basis for the installation of an autopilot/stabilization augmentation system (AP/SAS) on the Eurocopter model AS350B, AS350BA, AS350B1, AS350B2, AS350B3 (AS350B series), AS350D, and EC130 helicopters, Type Certificate Number H9EU.

The AP/SAS must be designed and installed so that the failure conditions identified in the functional hazard assessment (FHA) and verified by the system safety assessment (SSA), after design completion, are adequately addressed in accordance with the "failure condition categories" and "requirements" sections (including the system design integrity, system design environmental, and test and analysis requirements) of these special conditions.

I. Failure Condition Categories

Failure conditions are classified, according to the severity of their effects on the rotorcraft, into one of the following categories:

1. *No Effect*—Failure conditions that would have no effect on safety; for example, failure conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions would include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload, such as, routine flight

plan changes, or result in some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or result in impairing crew efficiency, physical distress to occupants, including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

- A large reduction in safety margins or functional capabilities;
- Physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or
- Possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

Note 1: "Hazardous/severe-major" failure conditions can include events that are manageable by the crew by the use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a catastrophic event.

5. *Catastrophic*—Failure conditions which would result in multiple fatalities to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

The present §§ 27.1309 (b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in "catastrophic" or "hazardous/severe-major" failure conditions, or for complex systems whose failures could result in "major" failure conditions. The current regulations are inadequate because when §§ 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in "catastrophic" or "hazardous/severe-major" effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

Hoh must provide the FAA with a SSA for the final AP/SAS installation configuration that will adequately address the safety objectives established by the FHA and the preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This will show that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS.

Note 2: The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on civil airborne Systems and Equipment).

II. Requirements

Hoh must comply with the existing requirements of § 27.1309 for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "no effect," and "minor," and for non-complex systems whose failure condition category is classified as "major." Hoh must comply with the requirements of these special conditions for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "catastrophic" and "hazardous severe/major," and for complex systems whose failure condition category is classified as "major." A complex system is a system whose operations, failure conditions, or failure effects are difficult to comprehend without the aid of analytical methods (for example, FTA, Failure Modes and Effect Analysis, FHA).

System Design Integrity Requirements

Each of the failure condition categories defined in these special conditions relate to the corresponding aircraft system integrity requirements. The system design integrity requirements, for the Hoh AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category, and the proposed software design assurance level, are as follows:

- "Major"—For systems with "major" failure conditions, failures resulting in these major effects must be shown to be remote, a probability of occurrence on the order of between 1×10^{-5} to 1×10^{-7} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level C software design assurance level.
- "Hazardous/Severe-Major"—For systems with "hazardous/severe-major" failure conditions, failures resulting in these hazardous/severe-major effects must be shown to be extremely remote, a probability of occurrence on the order of between 1×10^{-7} to 1×10^{-9} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level B software assurance level.
- "Catastrophic"—For systems with "catastrophic" failure conditions, failures resulting in these catastrophic effects must be shown to be extremely improbable, a probability of occurrence on the order of 1×10^{-9} failures/hour or less, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level A design assurance level.

System Design Environmental Requirements

The AP/SAS system equipment must be qualified to the appropriate environmental level per RTCA document DO–160F (Environmental Conditions and Test Procedures for Airborne Equipment), for all relevant aspects. This is to show that the AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

Test and Analysis Requirements

Compliance with the requirements of these special conditions may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is related to the associated failure condition category. If the AP/SAS is a complex system, compliance with the requirements for failure conditions classified as "major" may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements for failure conditions classified as "hazardous/severe-major" may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for "hazardous/severe-major" failure conditions and effects due to safety considerations. Compliance with the requirements for failure conditions

classified as "catastrophic" may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited flight tests in combination with simulation are used as a part of a showing of compliance for "catastrophic" failure conditions. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

These special conditions require that the Hoh AP/SAS system installed on a Eurocopter model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, and EC130 helicopter, Type Certificate Number H9EU, meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design system integrity requirements.

Issued in Fort Worth, Texas, on March 31, 2011.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–8294 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0262; Directorate Identifier 2010–NM–215–AD; Amendment 39–16649; AD 2011–07–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 050 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

* * * [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker 50 and Fokker 60 type design, in response to these regulations, revealed that the clearance between parts of the main landing gear (MLG) and the fuel pipes may be insufficient.

This condition, if not detected and corrected, could lead to chafing, possibly resulting in fuel leakage and, in combination with other factors, a fuel fire.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 28, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 28, 2011.

We must receive comments on this AD by May 31, 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.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0197, dated October 1, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker 50 and Fokker 60 type design, in response to these regulations, revealed that the clearance between parts of the main landing gear (MLG) and the fuel pipes may be insufficient.

This condition, if not detected and corrected, could lead to chafing, possibly resulting in fuel leakage and, in combination with other factors, a fuel fire.

EASA issued AD 2010–0182 to require actions to ensure that a minimum clearance is maintained between the parts of the MLG and the fuel pipes in both nacelles.

Since that AD was issued, it was discovered that aeroplane serial numbers 20133 through 20142 were erroneously omitted in the original Fokker Service Bulletins (SB) and consequently the AD did not apply to those aeroplanes. The two SB's (some typographical errors in part numbers were also found) have now been revised to correct this omission.

For the reasons described above, this new AD retains the requirements of AD 2010–0182, which is superseded, and expands the Applicability to add the 10 missing serial numbers.

The required actions include an inspection to determine fuel pipe part numbers, a general visual inspection to determine the clearance between certain fuel pipes and parts of the main landing gear, and replacement of certain pipes with insufficient main landing gear clearance. The required actions also include revising the maintenance program to incorporate a fuel limitation and a critical design configuration control limitation (CDCCL). You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010; and Service Bulletin SBF50–28–031, Revision 1, dated September 15, 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 required 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 AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0262; Directorate Identifier 2010–NM–215–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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

For the reasons discussed above, I certify this AD:

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 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 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:

2011–07–12 Fokker Services B.V.: Amendment 39–16649. Docket No. FAA–2011–0262; Directorate Identifier 2010–NM–215–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.27 Mark 050 airplanes; certificated in any category; serial numbers 20133 through 20335 inclusive; except those with inboard fuel tanks installed.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or critical design configuration control limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (n) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

* * * [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker 50 and Fokker 60 type design, in response to these regulations, revealed that the clearance between parts of the main landing gear (MLG) and the fuel pipes may be insufficient.

This condition, if not detected and corrected, could lead to chafing, possibly resulting in fuel leakage and, in combination with other factors, a fuel fire.

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

(g) Within 6 months after the effective date of this AD: Inspect the part numbers of each fuel pipe (two in each nacelle), in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010.

(h) If, as a result of the inspection required by paragraph (g) of this AD, fuel pipe part numbers other than those specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010, are found to be installed: Before further flight, do a general visual inspection to determine the clearance between the fuel pipes and the parts of the main landing gear, and for chafing marks, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010.

Fuel Pipe Replacement

(i) If, during the inspection required by paragraph (h) of this AD, the measured clearance is less than or equal to 3.0 mm and greater than 1.5 mm for one or more fuel pipes, and no chafing marks are found: Within 24 months after the effective date of this AD, install new fuel pipes in both engine nacelles, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–031, Revision 1, dated September 15, 2010.

(j) If, during the inspection required by paragraph (h) of this AD, the measured clearance is less than or equal to 1.5 mm for one or more fuel pipes, or chafing marks are found on one or more fuel pipes: Before further flight, install new fuel pipes in both engine nacelles, in accordance with the Accomplishment Instructions of Fokker's Service Bulletin SBF50–28–031, Revision 1, dated September 15, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation

(k) Within 6 months after the effective date of this AD, revise the airplane maintenance program by incorporating the limitations specified in paragraphs (k)(1) and (k)(2) of this AD.

(1) The CDCCL specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF50–28–031, Revision 1, dated September 15, 2010.

(2) The fuel airworthiness limitation specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010. The initial compliance time for doing the inspection is within 4,800 flight hours after doing the inspection required by paragraph (h) of this AD.

No Alternative Actions, Intervals, and/or CDCCLs

(l) After accomplishing the revision required by paragraph (k) of this AD, no alternative actions (*e.g.,* inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (n) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Actions accomplished prior to the effective date of this AD, in accordance with Fokker Service Bulletin SBF50–28–028, dated May 20, 2010; or Service Bulletin SBF50–28–031, dated May 20, 2010; as applicable; are acceptable to comply with the corresponding requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although EASA Airworthiness Directive 2010–0197, dated October 1, 2010, specifies both revising the maintenance program to include airworthiness limitations, and doing certain repetitive actions (e.g., inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–227–1137; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(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

(o) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0197, dated October 01, 2010; Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010; and Fokker Service Bulletin SBF50–28–031,

Revision 1, dated September 15, 2010; for related information.

Material Incorporated by Reference

(p) You must use Fokker Service Bulletin SBF50–28–028, Revision 1, dated September 15, 2010; and Fokker Service Bulletin SBF50–28–031, Revision 1, dated September 15, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 22, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–7743 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0263; Directorate Identifier 2010–NM–105–AD; Amendment 39–16653; AD 2011–08–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–541 and –642 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

An operator has reported cracks on the aft hinge FWD [forward] fittings of the NLG [nose landing gear] aft doors (Right Hand (RH) side or Left Hand (LH) side). The cracks extended by approximately 15 millimetres from the upper hole to the edge of the fittings.

* * * Cracks on the NLG aft door fittings, if not corrected, could lead to the loss in flight of the door, possibly resulting in injury to persons on the ground or aeroplane damages.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 28, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 28, 2011.

We must receive comments on this AD by May 31, 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.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0028, dated February 23, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

An operator has reported cracks on the aft hinge FWD [forward] fittings of the NLG [nose landing gear] aft doors (Right Hand (RH) side or Left Hand (LH) side). The crack extended by approximately 15 millimetres from the upper hole to the edge of the fittings.

Investigation has revealed that these cracks have initiated due to fatigue loads and propagated under bending load. Cracks on the NLG aft door fittings, if not corrected, could lead to the loss in flight of the door, possibly resulting in injury to persons on the ground or aeroplane damages.

Consequently, in order to maintain the structural integrity of the NLG aft door aft hinge attachment fittings, this AD requires repetitive [detailed] inspections [for cracking] of the area and fittings replacement in case of finding [including repetitive high frequency eddy current inspections or fluorescent penetrant inspections for cracking of the area for certain findings until the replacement is done].

Required actions also include, for airplanes on which the forward fitting of the NLG aft door aft hinge is replaced, repetitive detailed inspections for cracking of the replaced fitting; and if any cracking is found, replacement of both forward and aft fittings by new fittings on the aft hinge of the affected NLG aft door. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–52–5016, including Appendices 01 and 02, Revision 02, dated August 25, 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or

develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 required 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 AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0263; Directorate Identifier 2010–NM–105–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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

For the reasons discussed above, I certify that this AD:

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. 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 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2011–08–03 Airbus: Amendment 39–16653. Docket No. FAA–2011–0263; Directorate Identifier 2010–NM–105–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–541 and –642 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

An operator has reported cracks on the aft hinge FWD [forward] fittings of the NLG [nose landing gear] aft doors (Right Hand (RH) side or Left Hand (LH) side). The cracks extended by approximately 15 millimetres from the upper hole to the edge of the fittings.

* * * Cracks on the NLG aft door fittings, if not corrected, could lead to the loss in flight of the door, possibly resulting in injury to persons on the ground or aeroplane damages.

* * * * *

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

(g) At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Perform a detailed inspection of the aft hinge forward attachment fittings of the right and left NLG aft doors, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

(1) For airplanes having accumulated less than 1,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 1,000 total flight cycles or within 100 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes having accumulated 1,000 or more total flight cycles, but less than 2,500 total flight cycles as of the effective date of this AD: Within 100 flight cycles after the effective date of this AD.

(3) For airplanes having accumulated 2,500 or more total flight cycles as of the effective date of this AD: Within 50 flight cycles after the effective date of this AD.

Repetitive Inspection

(h) If no cracking is found during the inspection required by paragraph (g) of this AD, repeat the detailed inspection specified in paragraph (g) of this AD thereafter at intervals not to exceed 500 flight cycles.

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, perform a high frequency eddy current (HFEC) inspection for cracking of the forward and aft attachment fittings of the aft hinge on the affected aft

NLG door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

Repair

(j) If an additional crack finding is made during any HFEC inspection required by paragraph (i) of this AD, before further flight, replace both forward and aft fittings with new fittings on the aft hinge of the affected NLG aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

(k) If no additional crack finding is made during any HFEC inspection required by paragraph (i) of this AD: Repeat the HFEC inspection specified in paragraph (i) of this AD thereafter at intervals not to exceed 10 flight cycles; or perform a fluorescent penetrant inspection for cracking thereafter at intervals not to exceed 3 flight cycles, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010, until the replacement required by paragraph (k)(1) or (k)(2) of this AD is done.

(1) If an additional crack is found during any inspection required by paragraph (k) of this AD, before further flight, replace both forward and aft fittings with new fittings on the aft hinge of the affected NLG aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

(2) If no additional crack finding is made during any HFEC inspection required by paragraph (i) of this AD, or repetitive HFEC inspection or fluorescent penetrant inspection required by paragraph (k) of this AD: Within 20 flight cycles after finding a crack during the most recent inspection required by paragraph (g) or (h) of this AD, replace both forward and aft fittings with new fittings on the aft hinge of the affected NLG aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

(l) For airplanes on which the forward fitting of the aft hinge of the NLG aft door is replaced in accordance with paragraph (j) or (k) of this AD: Prior to the accumulation of 1,000 flight cycles on the forward fitting, perform the detailed inspection required in paragraph (g) of this AD, and thereafter the applicable repetitive inspection required in paragraph (h) of this AD, and apply the applicable actions required in paragraphs (i), (j), and (k) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections accomplished before the effective date of this AD according to Airbus Mandatory Service Bulletin A340–52–5016, dated February 1, 2010; or Airbus Mandatory Service Bulletin A340–52–5016, Revision 01, dated March 30, 2010; are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI does not specify corrective action if cracking is found during a fluorescent penetrant inspection. This AD specifies replacing both forward and aft fittings with new fittings on the aft hinge of the affected nose landing gear aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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

(o) Refer to MCAI EASA Airworthiness Directive 2010–0028, dated February 23, 2010; and Airbus Mandatory Service Bulletin A340–52–5016, Revision 02, dated August 25, 2010; for related information.

Material Incorporated by Reference

(p) You must use Airbus Mandatory Service Bulletin A340–52–5016, excluding Appendix 01 and including Appendix 02, Revision 02, dated August 25, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; e-mail: *airworthiness.A330-A340@airbus.com*; Internet: *http://www.airbus.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8278 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0703; Directorate Identifier 2009–NM–093–AD; Amendment 39–16654; AD 2011–08–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 18, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; phone: 516–228–7355; fax: 516–794–5531; e-mail: *Craig.Yates@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on January 11, 2011 (76 FR 1556). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.
>
> Investigation has determined that incorrect stack-up tolerances of the apex joint or improper installation of the locking plate and apex nut could result in torque link apex pin disengagement. This directive mandates [a one-time detailed] inspection of the torque link apex joint [for correct installation and damage, and corrective actions if necessary] and replacement of the torque link apex nut.

The corrective actions include re-installing parts that are not correctly installed and replacing damaged parts. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 361 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $153,425, or $425 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2011–08–04 Bombardier, Inc.: Amendment 39–16654. Docket No. FAA–2009–0703; Directorate Identifier 2009–NM–093–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, serial numbers (S/Ns) 10003 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 and subsequent.

Subject

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

Reason

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

There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.

Investigation has determined that incorrect stack-up tolerances of the apex joint or improper installation of the locking plate and apex nut could result in torque link apex pin disengagement. This directive mandates [a one-time detailed] inspection of the torque link apex joint [for correct installation and damage, and corrective actions if necessary] and replacement of the torque link apex nut.

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 (P/N) and Serial Number (S/N)

(g) For all airplanes identified in paragraphs (c)(1) and (c)(2) of this AD: Within 900 flight hours after the effective date of this AD, inspect the main landing gear (MLG) shock strut assemblies to determine whether an MLG shock strut assembly having P/Ns 49000–11 through 49000–22 inclusive and a S/N 0001 through 0284 inclusive is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part and serial numbers of the MLG shock strut assembly can be conclusively determined from that review.

Inspection of the Torque Link Apex Joint

(h) For any MLG shock strut assembly having P/Ns 49000–11 through 49000–22 inclusive and a S/N 0001 through 0284 inclusive found installed during the inspection or records check required by paragraph (g) of this AD: Within 900 flight hours after the effective date of this AD, perform a one-time detailed inspection and all applicable corrective actions on the torque link apex joint, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008, except as provided by paragraph (l) of this AD. Do all applicable corrective actions before further flight.

Replacement or Rework of the Apex Nut

(i) For any MLG shock strut assembly identified during the inspection or records check required by paragraph (g) of this AD: Within 4,500 flight hours after the effective date of this AD, replace or rework the apex nut, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008.

Parts Installation

(j) As of the effective date of this AD, no person may install, on any airplane, a replacement MLG shock strut assembly identified in paragraph (j)(1) or (j)(2) of this AD, unless it has been reworked in accordance with paragraph B. of Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008.

(1) Part numbers 49000–11 through 49000–22 inclusive, and with a serial number in the range of S/Ns 0001 through 0284 inclusive (the serial number can start with "MA," "MAL," or "MA–").

(2) Part numbers 49050–5 through 49050–10 inclusive, and with a serial number in the range of S/Ns 1001 through 1114 inclusive (the serial number can start with "MA," "MAL," or "MA-").

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Inspections, corrective actions, replacements, and rework accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–32–019, dated March 16, 2006, are considered acceptable for compliance with the corresponding actions specified in this AD.

(l) The inspections specified in paragraph (h) of this AD are not required if the actions specified in paragraph (i) of this AD have already been accomplished; or if Bombardier Repair Engineering Order 670–32–11–0022, dated October 22, 2005, or Goodrich Service Concession Request SCR 0056–05, dated October 22, 2005; has been incorporated.

FAA AD Differences

Note 1: The MCAI specifies to inspect only airplanes having certain serial numbers that are part of the MCAI applicability. Because the affected part could be rotated onto any of the airplanes listed in the applicability, this AD requires that the inspection be done on all airplanes. We have coordinated this with the Transport Canada Civil Aviation (TCCA).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, 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.

Special Flight Permits

(n) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Related Information

(o) Refer to MCAI Canadian Airworthiness Directive CF–2009–20, dated May 1, 2009; and Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008; for related information.

Material Incorporated by Reference

(p) You must use Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Cote-Vertu Road West, Dorval, Quebec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; e-mail: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 23, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8196 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0325; Directorate Identifier 2010–NM–278–AD; Amendment 39–16652; AD 2011–08–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 050 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The design review conducted by Fokker Services on the Fokker 50 and Fokker 60 in response to these regulations revealed that, if chafing occurs between the Fuel Quantity Probe (FQP) and the probe wiring, with additional factors, this may result in an ignition source in the wing tank vapour space.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective April 28, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 28, 2011.

We must receive comments on this AD by May 31, 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.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0157, dated August 3, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The design review conducted by Fokker Services on the Fokker 50 and Fokker 60 in response to these regulations revealed that, if chafing occurs between the Fuel Quantity Probe (FQP) and the probe wiring, with additional factors, this may result in an ignition source in the wing tank vapour space.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

For the reasons described above, this AD requires a one-time [general visual] inspection to check for the presence of a rubber sleeve and cable tie near each FQP in both wing tanks and, depending on findings, the installation of a sleeve and cable tie.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources

inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 required 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 AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0325; Directorate Identifier 2010–NM–278–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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

For the reasons discussed above, I certify this AD:

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 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2011–08–02 Fokker Services B.V.: Amendment 39–16652. Docket No. FAA–2011–0325; Directorate Identifier 2010–NM–278–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.27 Mark 050 airplanes; certificated in any category; all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or critical design configuration control limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The design

review conducted by Fokker Services on the Fokker 50 and Fokker 60 in response to these regulations revealed that, if chafing occurs between the Fuel Quantity Probe (FQP) and the probe wiring, with additional factors, this may result in an ignition source in the wing tank vapour space.

This condition, if not corrected, in combination with flammable fuel vapours, could result in a wing fuel tank explosion and consequent loss 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 and Installation

(g) At a scheduled opening of the fuel tanks, but not later than 13 years after the effective date of this AD, do a general visual inspection for the presence of the rubber sleeve and cable tie on the cables of each FQP, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 2010.

(h) If, during the inspection required by paragraph (g) of this AD, an FQP does not have the rubber sleeve or cable tie installed: Before further flight, install the rubber sleeve and cable tie on the affected FQP and wiring, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 2010.

Maintenance Program Revision To Add Fuel Airworthiness Limitation

(i) Before further flight after accomplishing the inspection required by paragraph (g) of this AD: Revise the airplane maintenance program by incorporating the CDCCL specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 2010.

No Alternative Actions, Intervals, and/or CDCCLs

(j) After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Actions accomplished before the effective date of this AD according to Fokker Service Bulletin SBF50–28–027, dated May 27, 2010, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although EASA Airworthiness Directive 2010–0157, dated August 3, 2010, specifies both revising the maintenance program to include airworthiness limitations, and doing certain repetitive actions (*e.g.,* inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–227–1137; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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 EASA Airworthiness Directive 2010–0157, dated August 3, 2010; and Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 2010; for related information.

Material Incorporated by Reference

(n) You must use Fokker Service Bulletin SBF50–28–027, Revision 1, dated August 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8065 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1161; Directorate Identifier 2010–NM–152–AD; Amendment 39–16658; AD 2011–08–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

It has been found occurrence of screw units manufactured with metallographic non-conformity that may increase their susceptibility to brittle fracture. The screw failure may result in loss of the related balance washer causing a possible ram air turbine (RAT) imbalance event, which may result in RAT structural failure, which associated with an electrical emergency situation, could result in loss of power to airplane flight controls hydraulic back-up system.

* * * * *

Loss of power to the hydraulic back-up system for airplane flight controls could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 18, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 1, 2010 (75 FR 74670). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found occurrence of screw units manufactured with metallographic non-conformity that may increase their susceptibility to brittle fracture. The screw failure may result in loss of the related balance washer causing a possible ram air turbine (RAT) imbalance event, which may result in RAT structural failure, which associated with an electrical emergency situation, could result in loss of power to airplane flight controls hydraulic back-up system.
>
> * * * * *

Loss of power to the hydraulic back-up system for airplane flight controls could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. Required actions include doing a general visual inspection to determine the model, part number, and serial number of the RAT, and to determine if a certain symbol is marked on affected RATs. Corrective actions include replacing the RAT balance screw and marking the RAT identification plate. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Include Service Bulletin for Model ERJ 190–100 ECJ Airplanes

EMBRAER requested that we add EMBRAER Service Bulletin 190LIN–24–0006, dated July 27, 2010, to the NPRM, because it applies to Model ERJ 190–100 ECJ airplanes which are included in the NPRM applicability. The commenter requested that we change paragraphs (g), (h), (i), and (k) of the NPRM accordingly.

We agree that EMBRAER Service Bulletin 190LIN–24–0006, dated July 27, 2010, is acceptable for accomplishing the required actions of the AD for Model ERJ 190–100 ECJ airplanes. We have added a new paragraph (i) to this AD (and renumbered subsequent paragraphs accordingly) to refer to that service bulletin as an optional method of compliance for the requirements of this AD for those airplanes. This addition has been coordinated with the Agência Nacional de Aviação Civil (ANAC), the aviation authority for Brazil.

Clarification of Terminology

Paragraph (g)(2)(ii) of the NPRM specified to "replace the RAT balance screw with a new balance screw," while some RATs in fact have more than one balance screw. We have clarified that instruction by stating "replace the RAT balance screw(s) with a new balance screw(s)," in this final rule.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 241 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. 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 this AD to the U.S. operators to be $184,365, or $765 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2011–08–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16658. Docket No. FAA–2010–1161; Directorate Identifier 2010–NM–152–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; and Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

It has been found occurrence of screw units manufactured with metallographic non-conformity that may increase their susceptibility to brittle fracture. The screw failure may result in loss of the related balance washer causing a possible ram air turbine (RAT) imbalance event, which may result in RAT structural failure, which associated with an electrical emergency situation, could result in loss of power to airplane flight controls hydraulic back-up system.

* * * * *

Loss of power to the hydraulic back-up system for airplane flight controls could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Compliance

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

Actions

(g) Within 1,200 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a general visual inspection (GVI) to determine the RAT model, part number, and serial number, in accordance with Part 1 of the Accomplishment Instructions of EMBRAER Service Bulletin 170–24–0048, Revision 01, dated May 12, 2010; or EMBRAER Service Bulletin 190–24–0019, Revision 01, dated May 11, 2010; as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the model, part number, and serial number of the RAT can be conclusively determined from that review.

Note 1: For the purpose of this AD, a GVI is: "A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance, unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight or drop-light, and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked."

(1) For any RAT not having a serial number identified in EMBRAER Service Bulletin 170–24–0048, Revision 01, dated May 12, 2010; or EMBRAER Service Bulletin 190–24–0019, Revision 01, dated May 11, 2010: No further action is required by this paragraph.

(2) For any RAT having a serial number identified in EMBRAER Service Bulletin 170–24–0048, Revision 01, dated May 12, 2010; or EMBRAER Service Bulletin 190–24–0019, Revision 01, dated May 11, 2010: Within 1,200 flight hours or 6 months after the effective date of this AD, whichever occurs first, inspect to determine if the symbol "24–5" is marked on the RAT identification plate. A review of airplane maintenance records is acceptable in lieu of this inspection if the RAT identification plate can be conclusively determined to be marked with "24–5" from that review.

(i) If the symbol "24–5" is marked on the RAT identification plate: No further action is required by this paragraph.

(ii) If the symbol "24–5" is not marked on the RAT identification plate: Within 1,200 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace the RAT balance screw(s) with a new balance screw(s), and mark the RAT identification plate with the symbol "24–5," in accordance with Part 2 of the Accomplishment Instructions of EMBRAER Service Bulletin 170–24–0048, Revision 01, dated May 12, 2010; or EMBRAER Service Bulletin 190–24–0019, Revision 01, dated May 11, 2010; as applicable.

(h) As of the effective date of this AD, no person may install a RAT identified in Part 1 of the Accomplishment Instructions of EMBRAER Service Bulletin 170–24–0048, Revision 01, dated May 12, 2010; or EMBRAER Service Bulletin 190–24–0019, Revision 01, dated May 11, 2010; as applicable; on any airplane, unless that RAT is identified with the symbol "24–5" on the identification plate.

Acceptable Method of Compliance for Model ERJ 190–100 ECJ Airplanes

(i) Actions accomplished in accordance with EMBRAER Service Bulletin 190LIN–24–0006, dated July 27, 2010, for Model ERJ 190–100 ECJ airplanes, are considered acceptable for compliance with the corresponding actions specified in this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletins 170–24–0048 or 190–24–0019, both dated March 31, 2010, as applicable, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The Brazilian ADs apply to "airplanes equipped with Hamilton Sundstrand ram air turbine (RAT), Model ERPS37T, Part Number (P/N) 1703781 Series; with the serial numbers (S/N) contained in Embraer Service Bulletin[s 170–24–0048 or 190–24–0019]," and their first action is an inspection to determine if affected equipment is installed. This AD applies to all of the airplanes, with the first action in the AD being an inspection to determine if affected equipment is installed, because the affected part could be rotated onto any of the airplanes listed in the applicability of this AD.

(2) Although the MCAI states not to install the part identified in paragraph (h) of this AD after accomplishing the actions specified in paragraph (g)(2) of this AD, this AD prohibits installation of the part as of the effective date of this AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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

(l) Refer to MCAI Brazilian Airworthiness Directives 2010–06–04 and 2010–06–05, both dated July 26, 2010, and the service information identified in table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

EMBRAER Service Bulletin	Revision	Date
170-24-0048	01	May 12, 2010.
190–24–0019	01	May 11, 2010.
190LIN–24–0006	Original	July 27, 2010.

Material Incorporated by Reference

(m) You must use the applicable service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision	Date
170–24–0048	01	May 12, 2010.
190–24–0019	01	May 11, 2010.
190LIN–24–0006	Original	July 27, 2010.

Issued in Renton, Washington, on March 24, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–8411 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64251]

Technical Amendment to Rule 19b–4: Filings With Respect to Proposed Rule Changes by Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending Rule 19b–4(a) under the Securities Exchange Act of 1934 (the "Exchange Act") so that references to "business day" in Section 19(b) of the Exchange Act and Rule 19b–4 thereunder refer to a day other than a Saturday, Sunday, Federal holiday, a day that the U.S. Office of Personnel Management ("OPM") has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown in the event of a lapse in appropriations, or a day on which the Commission's Washington, DC office is otherwise not open for regular business.

DATES: *Effective Date:* April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Holley III, Assistant Director, at (202) 551–5614, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Filing of SRO Proposed Rule Changes

A. Background

Section 19(b)(1) of the Exchange Act [1] requires self-regulatory organizations ("SROs"), including national securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board,[2] to file with the Commission any proposed rule change,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26) (defining the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board).

[3] Section 19(b)(1) of the Exchange Act defines a "proposed rule change" as "any proposed rule, or any proposed change in, addition to, or deletion from the rules of" an SRO. 15 U.S.C. 78s(b)(1). Section 3(a)(27) of the Exchange Act defines "rules" to include "the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing * * * and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as

which must be submitted on Form 19b–4 [4] in accordance with the General Instructions thereto. Once a proposed rule change has been filed, the Commission is required to publish it in the **Federal Register** to provide an opportunity for public comment.[5] A proposed rule change generally may not take effect unless it is either approved by the Commission pursuant to Section 19(b)(2) of the Exchange Act [6] or is designated by the SRO to become effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act.[7] The Commission's Division of Trading and Markets, on behalf of the Commission, is responsible for the day-to-day review of SRO proposed rule changes.[8]

There may be days, in addition to Saturday, Sunday and Federal holidays, on which the Commission's Washington, DC offices are not open for regular business. For example, a lapse in appropriations or an announcement by OPM that Federal agencies are closed for business may cause the Commission's Washington DC offices to not be open for regular business. To make clear that "business day" does not include those days, the Commission is hereby adopting a technical amendment to Rule 19b–4 to state what constitute "business days" for purposes of Section 19(b) under the Exchange Act and Rule 19b–4 concerning SRO proposed rule changes.

B. References to "Business Days" in Section 19 and Rule 19b–4

Section 19(b) of the Exchange Act provides the time frames within which the Commission must act in connection with reviewing and processing SRO proposed rule changes. Some time frames are tied to calendar days; others are tied to business days.

In particular, Section 19(b)(10)(B) of the Exchange Act provides that the Commission may, within *seven business days* after receipt of a filing, reject as improperly filed a filing that does not comply with the rules of the Commission relating to the required form of a proposed rule change.[9] That provision currently is the only reference to "business day" contained in Section 19.

References to "business days" are also found in Rule 19b–4 under the Exchange Act. For example, subparagraph (l) provides a two business day deadline by which an SRO must post a proposed rule change on its Web site after filing it with the Commission, and subparagraph (m) provides a two business day deadline by which an SRO must update its Web site to reflect changes to the text of its rules.[10]

Other references to business days, including in paragraphs (f)(6) and (k) of Rule 19b–4, refer to the filing by the SRO of materials with the Commission, which the Commission must then review in the normal course of its oversight of the SRO rule change process. Specifically, Rule 19b–4(f)(6) allows an SRO to designate certain proposed rule changes as effective upon filing if, among other things, the SRO provides written notice of its intent to file, along with a brief description and proposed rule text (a "prefiling"), to the Commission at least *five business days* prior to filing. In addition, Rule 19b–4(k) specifies when a proposed rule change is received by the Commission and provides that if the conditions of Rule 19b–4 and Form 19b–4 are satisfied, a proposed rule change will be received by and accepted as filed on a *business day* if it is filed on or before 5:30 p.m. (Eastern time).[11] Any filing submitted after 5:30 p.m. on a business day will be accepted by the Commission but will have as its date of filing the next business day.[12] Rule 19b–4 does not, however, define what constitutes a "business day."

While the Commission's Washington DC headquarters is routinely closed for business on weekends (Saturdays and Sundays) and designated Federal holidays,[13] the Commission's Washington DC headquarters also may be closed for other reasons. For example, Federal agencies may be closed in various situations, including, but not limited to, adverse weather, the observance of special events in the District of Columbia (including, but not limited to, presidential inaugurations or funeral observances), or any other conditions or events that cause Federal agencies to not open for regular business. These types of closings may be non-agency specific and would generally affect most Federal agencies in the Washington, DC metropolitan area. For these types of closings, the OPM disseminates the Federal government's operating status for the Washington, DC area as "CLOSED" and publishes that operating status on its Web site at *http://www.opm.gov*.[14]

In addition, the Commission could be subject to a Federal government-wide shutdown in the event of a lapse in Congressional appropriations resulting in the temporary cessation of non-essential Federal government operations. Other circumstances may uniquely and specifically affect the Commission's Washington, DC headquarters, causing the Commission to not be open for regular business at a time when other Federal agencies in the Washington, DC metropolitan area may or may not be open for regular business. Examples of these kinds of circumstances might include a disturbance at or problems with the Commission's headquarters facilities that cause it to close temporarily for regular business.[15]

II. Amendment to Rule 19b–4(a)

The Commission is adding new subparagraph (2) to Rule 19b–4(a) to specify that references to "business days" in Section 19 of the Exchange Act and Rule 19b–4 mean any day other than a Saturday, Sunday, Federal holiday, a day that OPM has announced that Federal agencies in the Washington,

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the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency." 15 U.S.C. 78c(a)(27). Rule 19b–4(b) under the Exchange Act defines "stated policy, practice, or interpretation" to mean, in part, "[a]ny material aspect of the operation of the facilities of the self-regulatory organization" or "[a]ny statement made generally available" that "establishes or changes any standard, limit, or guideline" with respect to the "rights, obligations, or privileges" of persons or the "meaning, administration, or enforcement of an existing rule." 17 CFR 240.19b–4(b).

[4] 17 CFR 249.819.

[5] *See* 15 U.S.C. 78s(b)(1). The SRO is required to prepare the notice of its proposed rule change on Exhibit 1 of Form 19b–4 that the Commission then publishes in the **Federal Register.**

[6] *See* 15 U.S.C. 78s(b)(2). However, as provided in Section 19(b)(2)(D) of the Exchange Act, 15 U.S.C. 78s(b)(2)(D), a proposed rule change may be "deemed to have been approved by the Commission" if the Commission fails to take action on a proposal that is subject to Commission approval within the statutory time frames specified in Section 19(b)(2).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* 17 CFR 200.30–3 (Delegation of authority to Director of the Division of Trading and Markets).

[9] 15 U.S.C. 78s(b)(10)(B). This period may be extended to 21 calendar days if, not later than 7 business days after the date of receipt by the Commission, the Commission notifies the SRO that it needs additional time due to the Commission's determination that the proposed rule change is unusually lengthy, complex, or raises novel regulatory issues. If it is not rejected, Section 19(b)(10)(A) of the Exchange Act provides that the date of filing of a proposed rule change is the "date on which the Commission receives the proposed rule change." 15 U.S.C. 78s(b)(10)(A).

[10] *See* 17 CFR 240.19b–4(l) and (m), respectively. An SRO is required to post and maintain a complete version of its rules on its Web site. *See* 17 CFR 240.19b–4(m)(1).

[11] 17 CFR 240.19b–4(k).

[12] *See id.*

[13] *See* Rule 104 of the Commission's Rules of Practice, 17 CFR 201.104 (Business Hours).

[14] These days differ from days when OPM disseminates an "OPEN" status, regardless of whether unscheduled leave or telework options are available or whether delayed arrival or early departure is in effect. *See* OPM's Washington, DC, Area Dismissal and Closure Procedures, *available at: http://www.opm.gov/oca/compmemo/dismissal.pdf.*

DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown in the event of a lapse in appropriations, or a day on which the Commission's Washington, DC office is otherwise not open for regular business.[16] The purpose of the amendment is to clarify the treatment of days where the Commission is not open and how such days impact an SRO's proposed rule change submitted pursuant to Rule 19b–4 and an SRO's obligation to post on its Web site a proposed rule change that has been filed with the Commission, as well as determining the "business days" upon which the five day prefiling and seven day rejection periods are measured.

The new text in Rule 19b–4(a)(2) applies to several aspects of the Commission's operations concerning the processing of SRO proposed rule change filings. First, pursuant to Rule 19b–4(k), proposed rule filings submitted electronically by SROs via its Electronic Form 19b–4 Filing System ("EFFS") on a day other than a business day of the Commission will be accepted by the Commission, but will have as their date of filing the next business day, as defined. For example, if the Commission is subject to a Federal government shutdown in the event of a lapse in appropriations from a Monday through a Friday, and resumes operations the following Monday, an SRO proposed rule change that was submitted electronically during the week the Federal government was shut down would, for purposes of Section 19(b) and Rule 19b–4, receive a filing date of the Monday the Federal government resumes operations.

In the event of a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a government shutdown in the event of a lapse in appropriations, or other circumstances that cause the Commission to not be open for regular business, the Commission would expect, to the extent feasible, to disseminate through EFFS a general notification viewable by all SROs reflecting that any proposed rule changes that an SRO submits through EFFS on such day or days will not be "filed" until the Commission is open for regular business.

Further, under Rule 19b–4(f)(6), an SRO is required to submit a prefiling at least five business days prior to filing a full 19b–4(f)(6) proposed rule change with the Commission. Under new paragraph (a)(2) to Rule 19b–4, for purposes of counting the five business day review period, any day that is not a business day of the Commission is not counted. For example, if an SRO submits a prefiling before 5:30 p.m. on Monday, February 1, and OPM announces that Federal agencies in the Washington, DC area, including the Commission, are closed due to inclement weather on Tuesday, February 2 and Wednesday, February 3, and the Commission subsequently reopens on Thursday, February 4, then February 2 and 3 would not be counted as "business days" that have elapsed for purposes of the five day prefiling period specified in Rule 19b–4(f)(6).

Separately, for purposes of the two business day period within which an SRO must post a proposed rule change on its Web site after filing it with the Commission, or the two business day period within which an SRO must update its Web site to reflect changes to the text of its rules, any non-business day of the Commission is not counted.[17] For example, if an SRO files a proposed rule change with the Commission on April 1 (a business day) on or before 5:30 p.m., and the Commission subsequently is not open for regular business on April 2 and 3, then April 2 and 3 would not be counted as "business days" that have elapsed for purposes of the Web site posting requirement in Rule 19b–4(l).

Finally, under Section 19(b)(10)(B) of the Exchange Act, the Commission generally has seven business days after the date of receipt of a filing to reject as improperly filed a filing that does not comply with the rules of the Commission relating to the required form of a proposed rule change.[18] Under new paragraph (a)(2) to Rule 19b–4, for purposes of counting the seven business day Commission review period, any non-business day of the Commission is not counted. For example, if the Commission is not open for regular business on February 1 and 2, but the Commission reopens on February 3, and an SRO had submitted a proposed rule change filing on February 1, February 1 and 2 would not be counted as "business days" that have elapsed for purposes of the seven day period provided under Section 19(b)(10)(B) because those days would not be business days.

The amendment to Rule 19b–4(a)(2) is limited solely to Section 19(b) under the Exchange Act and Rule 19b–4 thereunder concerning SRO proposed rule changes. By excluding as business days those days on which the Commission is not open for regular business, and therefore lacks personnel to review proposed rule changes, the amendment facilitates the statutory purposes and statutory requirements for a full and adequate review. Without the rule change, an SRO's proposal might go into effect (*e.g.,* in the case of an immediately effective filing submitted pursuant to Section 19(b)(3)(A) of the Exchange Act) in the absence of Commission review, publication in the **Federal Register**, or an opportunity for public comment, all of which are contemplated by the Exchange Act. Accordingly, the amendment is intended to support the statutory framework in which the Commission reviews and publishes for public comment all SRO proposed rule changes to help ensure that SROs carry out the purposes of the Exchange Act.[19]

III. Certain Findings

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[20] The Commission is making a technical amendment to Rule 19b–4 to provide that references to "business days" in Section 19 of the Exchange Act and Rule 19b–4 mean any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown in the

[16] The Commission is also redesignating paragraph (a) of Rule 19b–4 as paragraph (a)(1).

[17] *See* 17 CFR 240.19b–4(l) and (m), respectively.

[18] *See supra* note 9.

[19] For example, national securities exchanges are subject to Section 6 of the Exchange Act, 15 U.S.C. 78f, which requires, among other things, that the rules of the SRO be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * [and] to protect investors and the public interest" and that they not be designed to "permit unfair discrimination between customers, issuers, brokers, or dealers." 15 U.S.C. 78f (b)(5). In reviewing an SRO's proposed rule change, Section 19(b)(2)(C) of the Exchange Act, 15 U.S.C. 78s(b)(2)(C), provides the standards for Commission approval of an SRO's proposed rule change, which direct the Commission to consider whether the proposal is consistent with the Exchange Act and the rules and regulations thereunder that are applicable to the SRO. For immediately effective filings, the Commission is authorized to suspend the proposal "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 Exchange Act]." 15 U.S.C. 78s(b)(3)(C). Accordingly, Commission review of SRO proposed rule changes helps ensure that SRO proposed rule changes are consistent with the Exchange Act and the rules thereunder that are applicable to the SRO.

[20] 5 U.S.C. 553(b).

event of a lapse in appropriations, or a day on which the Commission's Washington, DC office is otherwise closed for regular business due to other circumstances. The Commission finds that because the amendment is technical in nature and pertains to the Commission's organization, procedure or practice, publishing the amendment for comment is unnecessary.[21]

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[22] For the same reasons described above with respect to notice and the opportunity for comment, the Commission finds good cause for this technical amendment to take effect immediately.

IV. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act,[23] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and not to adopt a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.[24]

Because the amendment to Exchange Act Rule 19b–4 is technical in nature, and does not impose any additional requirements beyond those already required, we do not anticipate that the amendment would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

[21] For similar reasons, the amendment does not require analysis under the Regulatory Flexibility Act ("RFA") or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[22] *See* 5 U.S.C. 553(d)(3).

[23] 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Rules

The Commission is amending 17 CFR part 240, pursuant to authority set forth in the Exchange Act, including Sections 19(b) and 23(a).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, and 7210 et seq., 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 2. Amend § 240.19b–4 by:

■ a. Redesignating paragraph (a) as paragraph (a)(1); and

■ b. Adding new paragraph (a)(2).

The addition reads as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(a) * * *

(2) For purposes of Section 19(b) of the Act and this rule, a "business day" is any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown or a day on which the Commission's Washington, DC office is otherwise not open for regular business.

* * * * *

Dated: April 7, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–8919 Filed 4–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. FDA–1998–F–0072] (Formerly 98F–0165)

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of requests for a hearing and response to objections.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying requests that it received for a hearing on the final rule that amended the food additive regulations to provide for the safe use of ionizing radiation for the reduction of *Salmonella* in fresh shell eggs. After reviewing objections to the final rule and requests for a hearing, the Agency has concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking or modifying the amendment to the regulation.

FOR FURTHER INFORMATION CONTACT: Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1281.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of March 20, 1998 (63 FR 13675), FDA published a notice announcing the filing of a food additive petition (FAP), FAP 8M4584, submitted by Edward S. Josephson, University of Rhode Island, Food Science and Nutrition Research Center, to amend the regulations in part 179, *Irradiation in the Production, Processing, and Handling of Food* (21 CFR part 179), to provide for the safe use of ionizing radiation for the reduction of *Salmonella* in fresh shell eggs. In response to the petition, FDA issued a final rule in the **Federal Register** of July 21, 2000 (65 FR 45280), permitting the irradiation of fresh shell eggs for the reduction of *Salmonella* at doses not to exceed 3.0 kiloGray (kGy) (hereafter referred to as the "egg irradiation rule"). FDA based its decision on data in the petition and in its files. In the preamble to the final rule, FDA outlined the basis for its decision and stated that objections to the final rule and requests for a hearing were due within 30 days of the

publication date (*i.e.,* by August 21, 2000).

II. Objections and Requests for a Hearing

Section 409(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(f)(1)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, "specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections."

Under 21 CFR 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the final rule permitting the irradiation of fresh shell eggs for the reduction of *Salmonella,* FDA received 26 submissions with objections to the rule within the 30-day objection period. All but one of these submissions either expressed general opposition to the final rule, or objected to the rule based on issues that are outside the rule's scope such as the living conditions and practices in commercial egg production. Although most of these letters requested a hearing, no evidence was identified in support of any of these objections that could be considered in an evidentiary hearing (§ 12.22(a)(5)). Therefore, these objections do not justify a hearing.[1] The Agency will not discuss these submissions further. The one submission raising specific objections was a letter from Public Citizen (letter to Docket No. 98F–0165, August 17, 2000). The letter from Public Citizen sought revocation of the final rule based on five objections and requested a hearing on issues raised by each objection. A more detailed response to Public Citizen's objections is found in section IV of this document. In addition, FDA also received one letter in support of the egg irradiation rule.

[1] FDA also received letters after the close of the objection period that expressed general opposition to the egg irradiation rule. Tardy objections fail to satisfy the requirements of 21 U.S.C. 348(f)(1) and need not be considered by the Agency (*see ICMAD* v. *HEW,* 574 F.2d 553, 558 n.8 (D.C. Cir), *cert. denied,* 439 U.S. 893 (1978)).

III. Standards for Granting a Hearing

Specific criteria for deciding whether to grant or deny a request for a hearing are set out in § 12.24(b). Under that regulation, a hearing will be granted if the material submitted by the requester shows, among other things, the following: (1) There is a genuine and substantial factual issue for resolution at a hearing; a hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence; a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requestor; a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate; and (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested; a hearing will not be granted on factual issues that are not determinative with respect to the action requested (*e.g.,* if the action would be the same even if the factual issue were resolved in the way sought).

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing" (*Costle* v. *Pac. Legal Found.,* 445 U.S. 198, 214 (1980), *reh. denied,* 446 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 620–21 (1973)). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test (*Georgia-Pacific Corp.* v. *U.S. EPA,* 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law (*see* Fed. R. Civ. P. 56). The same principle applies in administrative proceedings (*see* § 12.24).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact "concerning which a meaningful hearing might be held" (*Pineapple Growers Ass'n* v. *FDA,* 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the Agency need not grant a hearing (*see Dyestuffs and Chemicals, Inc.* v. *Flemming,* 271 F.2d 281, 286 (8th Cir. 1959), *cert. denied,* 362 U.S. 911 (1960)). A hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *CPSC,* 555 F.2d 677, 684 (9th Cir. 1977)). A hearing need not be held to resolve questions of law or policy (*see Citizens for Allegan County, Inc.* v. *FPC, 414 F.2d 1125, 1128 (D.C. Cir. 1969); Sun Oil Co.* v. *FPC,* 256 F.2d 233, 240 (5th Cir.), *cert. denied,* 358 U.S. 872 (1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality, such as collateral estoppel, can be validly applied to the administrative process (*see Pac. Seafarers, Inc.* v. *Pac. Far East Line, Inc.,* 404 F.2d 804, 809 (D.C. Cir. 1968), *cert. denied,* 393 U.S. 1093 (1969)). In explaining why these principles ought to apply to an agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote: "The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity." *Retail Clerks Union, Local 1401* v. *NLRB,* 463 F.2d 316, 322 (D.C. Cir. 1972); *see also Costle* v. *Pac. Legal Found., 445 U.S.* at 215–17).

IV. Analysis of Objections and Response to Hearing Requests

The letter from Public Citizen contains five numbered objections and requests a hearing on each of them. FDA addresses each of the objections in this document, as well as the evidence and information filed in support of each, comparing each objection and the information submitted in support of it to

the standards for granting a hearing in § 12.24(b).

A. Findings of Study Co-Authored by Donald Thayer

The first objection raised by Public Citizen in response to this rule contends that the Agency misrepresented the findings of the 1990 study co-authored by Donald Thayer (Ref. 1). Specifically, the rule (65 FR 45280 at 45281) states, "* * * *S. enteritidis* was found to have similar sensitivities to ionizing radiation as five other strains of *Salmonella*" (*S.* is referring to *Salmonella*) when, in the original study, Thayer *et al.* state, "*S. enteritidis* was significantly more resistant to ionizing radiation than the other five strains of *Salmonella* tested * * *." Public Citizen asserts that by stating the findings in this manner FDA gives "* * * the false impression that the same level of radiation can be used to eliminate *S. enteritidis* as other strains of *Salmonella*."

The full sentence in the final rule states that "*Salmonella* strains, in addition to *S. enteritidis,* in fresh shell eggs should also be reduced by irradiation since *S. enteritidis* was found to have similar sensitivities to ionizing radiation as five other strains of *Salmonella* * * *." (65 FR 45280 at 45281). The reasoning supporting the statement's conclusion is that because irradiation reduces *S. enteritidis* it would be expected to reduce other strains of *Salmonella.* To the extent that *S. enteritidis* is more resistant to ionizing radiation than the other strains, the conclusion is strengthened. Further, FDA made clear in the final rule that irradiation of fresh shell eggs at the doses requested in the petition will reduce, but not entirely eliminate, microorganisms in eggs (65 FR 45280 at 45281).

FDA evaluated data provided by the petitioner on the absorbed radiation required to achieve inactivation of *S. enteritidis* in shell eggs. The data showed that irradiation at a dose as low as 1 kGy reduces the viability of *S. enteritidis* by 3-$\log_{10}$ (99.9 percent reduction) (Ref. 2). These data are comparable to the results seen by Thayer, *et al.,* in a similar medium inoculated with *S. enteritidis,* which showed a 3- to 4-$\log_{10}$ reduction of this pathogen at a dose of 1 kGy (Ref. 1). Furthermore, the standards for microbiological safety of fresh shell eggs are independent of the final rule permitting the irradiation of fresh shell eggs. Irradiation is a potential control point in the mitigation of *S. enteritidis* and other food-borne pathogens. The rule is not predicated on the approved treatment, by itself, resulting in fresh shell eggs that are pathogen-free. FDA is denying the request for a hearing on this point because the action would be the same even if the factual issue were resolved in the manner sought (§ 12.24(b)(4)).

B. Vitamin A Loss

In the egg irradiation final rule, FDA states that the vitamin A retention resulting from the irradiation of shell eggs at a maximum absorbed dose of 1.0 kGy (65 FR 45280 at 45281) yields a relative retention rate of 76 percent following a 24-day storage period. Public Citizen asserts that the final rule misrepresents the vitamin A loss from fresh shell eggs following irradiation at 3.0 kGy because FDA based these conclusions on vitamin A loss from the results of a study that used a maximum dose of 1.0 kGy compared to the maximum petitioned dose of 3.0 kGy, whereas another study in the petition showed that vitamin A retention by the eggs irradiated at 3.1 kGy and stored for 2, 15, and 33 days was 41.8 percent, 35.5 percent, and 20.1 percent, respectively (Refs. 3 and 4).

The studies that Public Citizen refers to were included in the petition and were analyzed and considered when making the safety assessment. FDA acknowledges that stating a vitamin A retention in the range of 20.1 to 35.5 percent is more appropriate in light of the maximum petitioned dose. Importantly, in its review of the petition, FDA considered the health implications from vitamin A loss in eggs at the maximum petitioned dose and concluded that the effect on health from this vitamin loss is not significant because a variety of foods provide vitamin A and the intake of other foods can compensate for any loss (Refs. 5 and 6).

The issue raised by Public Citizen must be a material issue concerning which a meaningful hearing might be held (*Pineapple Growers Ass'n* v. *FDA,* 673 F.2d at 1085). The Agency recognizes that irradiation can produce nutrient losses under some conditions and has concluded that such effects are not a safety concern under the conditions of this regulation. To justify a hearing on the vitamin A issue, Public Citizen must provide evidence that the nutritional loss in a food irradiated under the conditions of this regulation raises a safety concern because of its cumulative effect on the human diet (*see* 21 U.S.C. 348(c)(5)(B)). While FDA has the ultimate burden of proof when it approves the use of a food additive, once the Agency makes a finding of safety in a listing document, the burden shifts to an objector to come forward with evidence that raises a material issue of fact with regard to FDA's conclusion (*American Cyanamid Co.* v. *FDA,* 606 F.2d 1307, 1314 (DC Cir. 1979)). Public Citizen has submitted no information to support that vitamin A loss in fresh shell eggs irradiated under the conditions of the regulation is a safety concern. Therefore, this objection does not raise a genuine and substantial issue of fact for resolution at a hearing. FDA is denying the request for a hearing on this point because a hearing will not be granted if there is no genuine and substantial factual issue to be resolved (§ 12.24(b)(1)).

C. Analysis of Effects of Irradiation on Egg Yolk Carotenoids

Public Citizen asserts that FDA's analysis regarding the effects of irradiation on egg yolk carotenoids is flawed because the information used to analyze the nutritional information of egg yolk carotenoids is based on doses of 0.5 kGy and 1.0 kGy, not the petitioned maximum of 3.0 kGy.

FDA acknowledges that Agency's analysis of the effects of irradiation on egg yolk carotenoids was based on studies performed at lower doses than the petitioned maximum dose of 3.0 kGy; however, because there are a number of commonly consumed foods that are substantial sources of carotenoids in the diet, including yellow corn, carrots, and squash (Ref. 7), FDA has no health concerns about the loss of carotenoids in the diet from the irradiation of eggs. Public Citizen's request for hearing suggests that there is potential for harm from the loss of carotenoids resulting from the irradiation of shell eggs, without providing any evidence to support this suggestion. An objector must make an adequate proffer of evidence to support its allegations and to show that they provide a basis on which to call into question the Agency's conclusions. A hearing will be denied if the Commissioner of Food and Drugs (the Commissioner) concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate (§ 12.24(b)(3)). FDA concludes that the data and information are insufficient; therefore, FDA is denying the request for a hearing based on this objection.

D. Request for Updated Analysis for Irradiation of Fresh Shell Eggs Not To Exceed 3.0 kGy

Public Citizen objects to the egg irradiation final rule on the grounds that the Agency did not adequately update "[n]umerous issues raised in the two initial analysis [sic]" after the petition

was amended to allow for doses up to 3.0 kGy from 1.7 kGy.

When the petition (FAP 8M4584) was originally submitted, the maximum petitioned dose was 1.7 kGy. The petition was subsequently amended to increase the maximum dose to 3.0 kGy and additional chemistry and toxicology reviews were performed by FDA following this amendment. Based on these reviews, FDA concluded that the 3.0 kGy dose for shell eggs did not change the general conclusions from the original reviews (Refs. 3 and 6). Public Citizen neither specifies the "[n]umerous issues" nor does it provide any information that would cause the Agency to change its conclusion that the consumption of irradiated shell eggs is safe.

A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate (§ 12.24(b)(3)). FDA concludes that the data and information are insufficient; therefore, FDA is denying the request for a hearing based on this objection.

E. Bureau of Foods Irradiated Food Committee Report of 1980

Public Citizen alleges that FDA failed to follow all of the recommendations put forth in 1980 by the Bureau of Foods Irradiated Food Committee (BFIFC) regarding the evaluation of irradiated foods. Specifically, Public Citizen quotes the following from a BFIFC report: "Foods irradiated at doses above 100 Krad [1 kGy] and comprising more that 0.01% of the diet are estimated to contain URPs [Unique Radiolytic Products] in sufficient quantity to warrant toxicological evaluation. * * * [T]ests must be performed on extracts in which the concentration of *radiolytic products is maximized*" (Ref. 8).

Public Citizen then states that there is no indication in the egg irradiation rule or its references that such tests were conducted or reviewed by the FDA before the petition was approved.

The assertion that FDA failed to comply with recommendations set forth by the BFIFC committee has been raised previously by Public Citizen and others and has been responded to by the Agency in the molluscan shellfish final rule (70 FR 48057 at 48069, August 16, 2005) and in other previous rulemakings regarding the irradiation of food (*see, e.g.,* 53 FR 53176 at 53179, December 30, 1988, and 62 FR 64102 at 64105, December 3, 1997).

As discussed previously, the BFIFC report was an internal document prepared by FDA scientists that provided recommendations for evaluating the safety of irradiated foods based on the known effects of food irradiation and on the capabilities of toxicological testing. The report was made available to the public for comment in the **Federal Register** of March 27, 1981 (46 FR 18992). While the report and the comments received on it have aided FDA's thinking regarding the safety testing of irradiated foods, the report established no requirements. Furthermore, FDA has not adopted regulations that require toxicological testing of a food additive if that additive constitutes a certain portion of the diet, and Public Citizen has not cited any regulation that imposes such a requirement.

In addition, the understanding of radiolytic products produced by the irradiation of foods has evolved since 1980. As noted in the egg irradiation final rule, "[m]ost of the radiolysis products [of shell egg irradiation up to 3kGy] are either the same as, or structurally similar to, compounds found in foods that have not been irradiated, and are formed in very small amounts." (65 FR 45280). Similarly, in the **Federal Register** of December 3, 1997, for the Agency rulemaking on irradiation of refrigerated or frozen uncooked meat, meat byproducts, and certain meat food products to control food-borne pathogens and extend product shelf-life, FDA concluded that, "[i]n irradiated flesh foods, most of the radiolytic products derived from proteins have the same chemical composition but are altered in their secondary and tertiary structures. These changes are similar to those that occur as a result of heating, but in the case of irradiation, such changes are far less pronounced and the amounts of reaction products generated are far lower." (62 FR 64107 at 64110, December 3, 1997).

Consistent with section 409 of the FD&C Act, the Agency's decision on the safety of the irradiation of fresh shell eggs was based on the entire record. FDA reviewed and evaluated studies submitted in the petition as well as additional toxicology studies of irradiated foods, including red meat, chicken, fish and eggs, which are available in Agency files. Included in the data considered by the FDA in review of the petition were at least three studies conducted specifically on irradiated eggs.

Once the Agency makes a finding of safety in an approval document, the burden shifts to an objector to come forward with evidence that calls into question FDA's conclusion (*see* § 12.24(b)(2)). Although Public Citizen alleged that the rule did not comply with the recommendations in the BFIFC report, Public Citizen did not present any evidence that these alleged inconsistencies, even if true, would have led to a different conclusion concerning the safety of irradiation of fresh shell eggs. Therefore, FDA is denying this objection and request for a hearing because it raises no factual issue that, even if resolved in the way sought by the objection, would justify the action requested (§ 12.24(b)(4)).

V. Summary and Conclusion

Section 409 of the FD&C Act requires that a food additive be shown to be safe prior to marketing. Under 21 CFR 170.3(i), a food additive is "safe" if "there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use." In the Agency's July 21, 2000, final rule approving the use of irradiation of fresh shell eggs, FDA concluded, based on its evaluation of the data submitted in the petition and other relevant material, that this use of irradiation is safe for its intended use for the reduction of *Salmonella* in fresh shell eggs.

The petitioner has the burden to demonstrate the safety of the additive to gain FDA approval. However, once FDA makes a finding of safety in an approval document, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion (*see* section 409(f)(1) of the FD&C Act).

Despite its allegations, Public Citizen has not established that FDA overlooked significant information in the record while reaching its conclusion that the use of irradiation for reduction of *Salmonella* in fresh shell eggs is safe. Therefore, the Agency has determined that the objections requesting a hearing do not raise any genuine and substantial issue of fact that would justify an evidentiary hearing (§ 12.24(b)). Accordingly, FDA is not making any changes in response to the objections and is denying the requests for a hearing.

VI. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, under Docket No. FDA–1998–F–0072 (formerly 98F–0165) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

1. Thayer, D. W., G. Boyd, W.S. Muller, et al. "Radiation resistance of *Salmonella,*" *Journal of Industrial Microbiology,* 5: 383–390, 1990.
2. Memorandum for FAP 8M4584 from V. K. Bunning, FDA, to W. Trotter, FDA, April 4, 2000.
3. Memorandum for FAP 8M4584 from K. Morehouse, FDA, to W. Trotter, FDA, April 11, 2000.
4. Memorandum for FAP 8M4584 from K. Morehouse, FDA, to W. Trotter, FDA, May 14, 1999.
5. Memorandum for FAP 8M4584 from I. Chen, FDA, to W. Trotter, FDA, December 11, 1998.
6. Memorandum for FAP 8M4584 from I. Chen, FDA, to W. Trotter, FDA, March 31, 2000.
7. U.S. Department of Agriculture, Agricultural Research Service, USDA National Nutrient Database for Standard Reference, Release 23, Nutrient Data Laboratory Home Page (*http://www.ars.usda.gov/ba/bhnrc/ndl*), 2010.
8. Bureau of Foods Irradiated Foods Committee, *Recommendations for Evaluating the Safety of Irradiated Food,* Prepared for the Director, Bureau of Foods, FDA, July 1980.

Dated: April 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8815 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. FDA–2010–N–0099]

Revision of the Requirements for Constituent Materials

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to permit the Director of the Center for Biologics Evaluation and Research (CBER) or the Director of the Center for Drug Evaluation and Research (CDER), as appropriate, to approve exceptions or alternatives to the regulation for constituent materials. A request for an exception or alternative will be considered for approval when the data submitted in support of such a request establish the safety, purity, and potency of the biological product for the conditions of use, including indication and patient population, for which the applicant is seeking approval. FDA is taking this action due to advances in developing and manufacturing safe, pure, and potent biological products licensed under the Public Health Service Act (the PHS Act) that, in some instances, render the existing constituent materials regulation too prescriptive and unnecessarily restrictive. This rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections.

DATES: This rule is effective May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 30, 2010 (75 FR 15639), FDA published a proposed rule to amend the regulations for constituent materials under § 610.15 (21 CFR 610.15). Constituent materials include ingredients, preservatives, diluents, adjuvants, extraneous protein and antibiotics that are contained in a biological product. FDA is amending the regulation for constituent materials to allow the Director of CBER or the Director of CDER, as appropriate, to approve an exception or alternative to the requirements under § 610.15. An exception or alternative will be considered for approval when the data submitted in support of such a request establish the safety, purity, and potency of the biological product for the conditions for which the applicant is seeking approval. Under the final rule, the Director of CBER or CDER would not approve an exception or alternative when the data or the conditions of use, including indication and patient population, for which the applicant is seeking approval, do not provide a sufficient scientific and regulatory basis for such an approval.

The final rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology, as they become available. However, the final rule does not diminish public health protections that are provided by existing laws and regulations. The final rule gives manufacturers the potential to employ advances in science and technology if the data provide a sufficient regulatory basis for approval of the product. This means that each manufacturer's request for an exception or alternative will be considered on a case-by-case basis to determine whether the product at issue meets the statutory and regulatory criteria for safety, purity, and potency for use in the intended population. The Director of CBER or CDER will only approve a request for an exception or alternative after determining that the particular request meets this prescribed criteria for the intended population. Examples of how the final rule provides flexibility (such as alternatives to the use of preservatives and modifications to the amount of aluminum permitted in certain biological products), without diminishing public health protections, are provided in the paragraphs that follow.[1]

Standards for certain constituent materials present in biological products are provided under § 610.15. Section 610.15(a) requires that all ingredients used in a licensed product, and any diluent provided as an aid in the administration of the product, meet generally accepted standards of purity and quality. Any preservative used must be sufficiently nontoxic so that the amount present in the recommended dose of the product will not be toxic to the recipient, and in the combination used, it must not denature the specific substances in the product to result in a decrease below the minimum acceptable potency within the dating period when stored at the recommended temperature. Products in multiple-dose containers must contain a preservative, except that a preservative need not be added to Yellow Fever Vaccine; Poliovirus Vaccine Live Oral; viral vaccines labeled for use with the jet injector; dried vaccines when the accompanying diluent contains a preservative; or to an allergenic product in 50 percent or more volume in volume (v/v) glycerin. Furthermore, under § 610.15, an adjuvant must not be introduced into a product unless there is satisfactory evidence that it does not affect adversely the safety or potency of the product.

Section 610.15(a) also requires that the amount of aluminum in the recommended individual dose of a biological product not exceed:

1. 0.85 milligrams if determined by assay;

[1] Although specific examples for use of extraneous protein and antibiotics are not provided, the final rule also allows for flexibility in applying the existing standards for extraneous proteins and antibiotics (§ 610.15(b) and (c)); provided that each request for an alternative or exception to these requirements is supported by data that establish the safety, purity, and potency of the biological product.

2. 1.14 milligrams if determined by calculation on the basis of the amount of aluminum compound added; or

3. 1.25 milligrams determined by assay provided that data demonstrating that the amount of aluminum used is safe and necessary to produce the intended effect are submitted to and approved by the Director of CBER or the Director of CDER.

Section 610.15 establishes standards for the presence of certain constituent materials in licensed, biological products and/or strictly limits the amount of certain constituent materials present in licensed biological products. However, in order to employ advancements in science and technology to benefit the public health, flexibility in applying these regulatory standards is needed.

For example, § 610.15 contains specific requirements as to preservatives. Preservatives are compounds that kill or prevent the growth of micro-organisms, particularly bacteria and fungi. The current requirements for preservatives were based, at least in part, on reports from scientific literature concerning serious injuries and deaths associated with bacterial contamination of multiple-dose containers of vaccines that did not contain a preservative.[2] As discussed previously, § 610.15 provides for limited exceptions from the preservative requirement. These exceptions include live viral vaccines that had been licensed under section 351 of the PHS Act (42 U.S.C. 262) and that were in production when the National Institutes of Health (NIH) issued the 1968 regulation.[3] [4]

Preservatives in multiple-dose containers have a long record of safe and effective use in preventing microbial growth in the event that the vaccine is accidentally contaminated, as might occur with repeated punctures of a multiple-dose container. Even though the use of preservatives has significantly declined in recent years with the use of products filled in single-dose containers that do not require addition of a preservative, some biological products such as inactivated influenza virus vaccines are still presented in multi-dose containers with a preservative. The use of preservatives could also decline further as manufacturers develop and employ new technologies, such as multi-dose adaptors to prevent contamination of products in multiple-dose containers, without the use of preservative.

However, the current regulation under § 610.15(a) does not provide FDA with flexibility to consider situations (outside of the listed exceptions) in which to allow the use of preservative-free vaccines in multiple-dose containers. It is necessary for FDA to have flexibility in applying the regulatory requirements for preservatives when, for example, state-of-the art technologies, such as the development of devices to ensure aseptic withdrawing offer a safe alternative to the use of preservatives in multiple-dose containers. The final rule permits the Director of CBER or the Director of CDER to approve a request to market a biological product in multiple-dose containers without the use of a preservative, if the manufacturer demonstrates that sufficient measures, such as an aseptic withdrawing technique through the use of an appropriate device, ensure that the product continues to meet the statutory and regulatory requirements for safety, purity, and potency. Thus, the final rule allows flexibility in the use of advancements in technology to provide a public benefit, while continuing to ensure the safety, purity, and potency of the product.

Another example where it is necessary for FDA to have flexibility in applying current regulatory requirements pertains to the amount of aluminum permitted under § 610.15(a) in the recommended single human dose of a biological product. Aluminum, in the form of an aluminum salt, is used as an adjuvant in certain biological products. The existing regulation limits the amount of aluminum per dose to no more than 0.85 milligrams (mg) if determined by assay or 1.14 mg if determined by calculation on the basis of the amount of aluminum compound added. In 1981, FDA amended § 610.15(a) to increase the permissible level of aluminum per dose to 1.25 mg both to make the regulation consistent with World Health Organization standards,[5] and because it appeared that certain groups (such as renal dialysis patients), who were understood to be at high risk of contracting hepatitis, might require a higher dosage of the hepatitis B vaccine, which would in turn, require amounts of aluminum as high as 1.25 mg per dose. (See "General Biological Products Standards; Aluminum in Biological Products," 46 FR 51903, October 23, 1981. See also "General Biological Products Standards for Aluminum in Biological Products," 46 FR 23765, April 28, 1981).

The aluminum content per dose in the formulation of a licensed biological product, as specified in § 610.15(a), reflects the NIH Minimum Requirements for Diphtheria Toxoid (1947) [6] and Tetanus Toxoid (1952).[7] The final rule does not alter the existing requirements regarding the amount of aluminum in a biological product. Instead, in a change that is analogous to the one FDA issued in 1981, involving the groups who were at high risk of contracting hepatitis, the final rule allows either the Director of CBER or the Director of CDER to approve an exception or alternative when the Director determines that a biological product meets the requirements for safety, purity, and potency for the conditions for which the applicant is seeking approval, but contains an amount of aluminum that is higher than currently permitted by § 610.15. For example, the final rule permits the Director of CBER or CDER to approve a manufacturer's request for an exception to use a proposed therapeutic vaccine for treating individuals with cancer, when the proposed vaccine contains aluminum levels higher than currently allowed but still meets the requirements of safety, purity, and potency.

II. Clarifications to the Preamble of the Proposed Rule

FDA received comments on the rule from manufacturers, private and public interest groups, and the general public. In response to comments expressing concerns about the safety of a licensed product for which FDA grants an exception or alternative to current regulations, FDA emphasizes that a manufacturer's request for an exception or alternative will not be approved unless the submitted data meet the

[2] See "The National Vaccine Advisory Committee Sponsored Workshop on Thimerosal Vaccines," pp. 21–25, August 11, 1999. See also Wilson, Graham S., *Hazards of Immunization,* 1967.

[3] With the creation of NIH, NIH had regulatory authority over biological products until 1972, at which time they were transferred to FDA. NIH issued the precursor regulation to constituent materials, § 610.15, in the **Federal Register** of January 10, 1968 (33 FR 367 at 369). See the **Federal Register** notice of June 29, 1972 (37 FR 12865) and the **Federal Register** notice of August 9, 1972 (37 FR 15993), for more information concerning the transfer of authority from NIH to FDA and how the regulations pertaining to biological products under 21 CFR part 73 were transferred to the then newly established 21 CFR part 273.

[4] Biological products had contained preservatives prior to 1968. "The National Vaccine Advisory Committee Sponsored Workshop on Thimerosal Vaccines," p. 24, August 11, 1999.

[5] More specifically, the amendment permitted the use of up to 1.25 mg per dose of aluminum determined by assay provided that data demonstrating that the amount of aluminum used is safe and necessary to produce the intended effect are submitted to and approved by the Director, Bureau of Biologics. "General Biological Products Standards; Aluminum in Biological Products," (46 FR 51903, October 23, 1981).

[6] NIH, Minimum Requirements for Diphtheria Toxoid, 4th Revision, 1947.

[7] NIH, Minimum Requirements for Tetanus Toxoid, 4th Revision, 1952.

statutory and regulatory criteria for safety, purity, and potency for use in the intended population. FDA also emphasizes that the product at issue must be shown to be safe, pure, and potent for the conditions of use, including proposed indication and patient population, for which the applicant is seeking approval, in determining whether the product may be approved. FDA further clarifies that consideration for approval of a request will be done case-by-case and will be based on review of the data submitted in support of a request.

In addition, in response to comments, FDA clarifies that there is both a need for FDA to have flexibility in applying the regulatory standards in § 610.15, and a need for manufacturers to have flexibility in employing advancements in science and technology for developing new safe, pure, and potent alternatives to current products. FDA provides more discussion on the need for flexibility in the responses to comments on the proposed rule.

FDA considered all comments received in response to the proposed rule and has determined that the proposed rule should be issued as a final rule. Accordingly, FDA is issuing as a final rule the amendment to § 610.15 under paragraph (d) to permit the Director of CBER or the Director of CDER, as appropriate, to approve an exception or alternative to the regulatory requirements for constituent materials, when the data submitted with the request for approval of an exception or alternative establish the safety, purity, and potency of the biological product, and is acceptable for use in the intended population. All requirements under § 610.15 remain in effect, except those for which the Director approves an exception or alternative. FDA approval of an exception or alternative will be done case-by-case, based on the data submitted for a specific product. Manufacturers seeking approval of an exception or alternative must submit a request in writing. The request may be submitted as part of the original biologics license application (BLA) or as an amendment to the original, pending application or as a prior approval supplement to an approved application.

III. Comments on the Proposed Rule

FDA received 15 letters of comment on the proposed rule, not including 1 duplicate letter from the same commenter. As stated previously, these comments were received from manufacturers, private and public interest groups, and the general public. Several of the comments supported the proposed rule and several comments disagreed with the proposed rule. Some of the comments on the proposed rule were similar to or duplicates of other comments received, and have been grouped together, where appropriate, to facilitate a uniform response.

To make it easier to identify the comments and our corresponding responses, the word "Comment" followed by a number is placed in parentheses and is used to indicate a particular comment or set of similar comments, as appropriate. The word "Response" in parentheses precedes FDA's response to a comment. The order of comments and responses, as listed, do not represent a value assigned to the comment but is used for organizational purposes only.

(Comment 1) Several comments supported the proposed rule. One such comment praised the rule for broadening the potential capacity for biologics manufacturers to provide medicines to the public without compromising the high level expectation of demonstrating safety, purity, and potency. Another comment supported the proposed rule for providing a means to advance "innovative science" and applications of use. Yet another comment expressed interest in seeing the "reasonable flexibility" provided in the proposed rule extended to other biopharmaceutical fields. Still another comment found the conditions and recommendations in the proposed rule to be comprehensible and useful.

(Response) FDA acknowledges and appreciates the supportive comments. As previously stated, the rule allows FDA the flexibility to approve an exception or alternative to the constituent materials regulation, without diminishing public health protections. As such, the final rule provides patients safe access to important products resulting from advances in science and technology. FDA continues to review existing regulations and may propose modification of these regulations as appropriate for public health and safety.

(Comment 2) One comment requests clarification as to whether a request for an exception or alternative to the requirements under § 610.15 can be made earlier in clinical development rather than waiting until submitting the original BLA.

(Response) FDA clarifies that although a manufacturer may submit a request for an exception or alternative early in the clinical development of a biological product, FDA considers such a request to be timely when the data intended to support the request establish the safety, purity, and potency of the biological product for its intended use. In developing data necessary to support a request for an exception or alternative, manufacturers must comply with all applicable laws and regulations, including the procedures and requirements for investigational new drug applications (INDs) and BLAs under parts 312 and 601 (21 CFR parts 312 and 601). Only after FDA determines that the biological product meets the statutory and regulatory criteria for safety, purity, and potency, and is acceptable for use in the intended population, may the Director of CBER or CDER approve a request for an exception or alternative.

However, FDA strongly encourages early communication from manufacturers intending to submit a request for an exception or alternative to the requirements under § 610.15. This includes pre-IND and IND communications by which manufacturers may seek FDA advice concerning issues such as data needed to support the rationale for testing a biological product in humans, the design of nonclinical pharmacology, toxicology, and drug activity studies, initial development plans for the biological product, and regulatory requirements for demonstrating safety, purity, and potency. Early communications between FDA and manufacturers, as described previously, are intended to be advisory and are not to be interpreted as approval of a request for an exception or alternative.

(Comment 3) One comment requests agreement from FDA that sponsors may administer multiple doses taken from individual preservative-free multi-dose vials in clinical trials prior to licensure, as long as the sponsor follows pre-approved aseptic procedures in defined time periods to support this format as part of the original license application.

(Response) FDA does not agree with the comment. The current regulation for preservatives requires that products in multiple-dose containers contain a preservative, with listed exceptions. The final rule provides the Director of CBER or CDER with flexibility to approve a request for an exception or alternative to this requirement. However, FDA will consider each request for an exception or alternative on a case-by-case basis and approval of such a request will be based on the determination that the data submitted with the request establishes a regulatory basis for approval. Sponsors seeking to investigate the use of a new biological product in humans must follow the procedures and requirements for investigational drugs under part 312. (See also Response to Comment 4).

(Comment 4) Several comments opposed the proposed rule because the commenters understood the rule to give the Director of CBER or CDER sole authority in the decisionmaking process to approve a request for an exception or alternative. Another comment stated that the proposed rule does not allow for a deliberative process for vaccine ingredient changes. Other comments stated that the drug industry had too much influence upon government agencies including FDA, and that all decisions about additives should reside with many experts, in order to avoid the potential of undue influence. One comment seeks greater transparency from FDA and manufacturers for all aspects of biologics. Another comment states that all changes to medicine, particularly those "which are proscribed by some government entities, should be subject to a public review."

(Response) FDA acknowledges and appreciates all comments on the proposed rule. FDA agrees with comments supporting public review and transparency. However, FDA disagrees with the comments opposing the authority of the Director of CBER or CDER to approve a biologic product. FDA also disagrees with the comments that the rule places the decisionmaking process in the hands of one person, does not allow for a deliberative process for vaccine ingredient changes, and that manufacturers will have an undue influence in the approval process.

Under the provisions of the PHS Act, and the Federal Food, Drug, and Cosmetic Act (the FD&C Act), FDA has the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, and potent. Through delegations of authority,[8] the Directors of CBER and CDER have been given the authority to approve biological products. Thus, the Directors of CBER and CDER may approve a biologic product determined to be safe, pure, and potent, based on factors that include review of data, and in some cases, taking into account recommendations and input from independent experts (*e.g.,* advisory committees), input from interested parties, and public comments.

The PHS Act and the FD&C Act provide FDA with the authority to issue regulations that not only establish the requirements for product approvals but also establish the requirements for clinical investigations of unapproved biologics (21 U.S.C. 355(i) and 42 U.S.C. 262(a)(2)(A)). In accordance with part 312, manufacturers seeking to investigate the use of a new biological product in humans must follow specified procedures and requirements for investigational biological products. During the IND process, manufacturers must submit, for FDA review, data and proposals for additional studies intended to support the safety, purity, and potency of a biological product. Manufacturers also are required to provide information on patient outcomes and adverse events observed during this investigation. FDA reviews the submitted data and, upon determining that the biological product does not represent an unreasonable risk to the safety of the persons who are the subjects of the clinical investigation, will allow a manufacturer to proceed with the investigational use of a biological product. A manufacturer, after developing data to support approval, may submit a BLA to FDA for review and approval.

Under § 601.2, the Director of CBER or CDER may approve a manufacturer's application for a biologics license only after a manufacturer submits an application accompanied by data derived from nonclinical laboratory and clinical studies that demonstrate that the manufactured product meets requirements of safety, purity, and potency. These data are reviewed by appropriate experts to determine whether the application meets the statutory and regulatory requirements. In addition to the recommendations made by these experts, the Director of CBER or CDER may seek input from other sources within and outside of FDA to determine whether the application should be approved. Further, FDA closely monitors the safety of a biological product during its pre-approval and post-approval development, and may take corrective action, as necessary to protect the public.

In addition to the review process described previously, a sponsor, applicant, or manufacturer of a biological product regulated under the PHS Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel (§ 10.75(b)(2) (21 CFR 10.75(b)(2)). Also, under § 10.75(c), interested persons outside of FDA may request internal review of a decision through established FDA channels of supervision or review.

Thus, the current regulations establish procedures for review and evaluation of biological products, which include review by appropriate internal and external experts. In addition, the current regulations allow for public and private entities to participate in FDA's review process, as appropriate. This process serves to increase transparency and helps ensure that the public health is protected. The final rule maintains these important regulatory procedures and requirements while increasing FDA's flexibility in employing advances in science and technology.

(Comment 5) Several comments opposed the proposed rule because the commenters believe the rule would make the use of vaccines less safe. One commenter stated that FDA is ignoring its mandate to make vaccines safer by any and all means at its disposal; that FDA is making vaccines less safe by removing the certainty as to the minimum standards that a biological product must meet; and that the proposed rule does not require that the written requests for such exemptions or alternatives include the appropriate proofs (toxicological and immunological) of the short-term and long-term safety to the most susceptible humans. A few comments stated that an increase in the amount of aluminum may compromise the safety of vaccines. Another comment stated that families do not feel that the current regulations are "too prescriptive and unnecessarily restrictive," and that families would prefer more stringent rules. Other comments discussed specific concerns with already-approved vaccines.

(Response) FDA acknowledges these comments, as many of the issues were considered in drafting the proposed rule. However, FDA disagrees with the assertion that the rule will result in a decrease in the safety of vaccines and other biological products for which a request for an exception or alternative to any requirement under § 610.15 is made and approved. These regulations will continue to be the criteria by which all license applications will be evaluated. However, in order to employ advancements in treatment for certain populations, such as treatment for individuals suffering from life-threatening conditions (*e.g.,* cancer), FDA needs flexibility in applying the regulations. By analogy, as is stated in the drug regulations at 21 CFR 314.105(c):

> While the statutory standards apply to all drugs, the many kinds of drugs that are subject to statutory standards, and the wide range of uses for those drugs demand flexibility in applying the standards. Thus FDA is required to exercise its scientific judgment to determine the kind and quantity of data and information an applicant is

[8] Delegations of authority give certain officials in CBER and CDER the legal authority to take substantive actions and perform certain functions of the Commissioner of Food and Drugs. Staff Manual Guide 1410.702 available on the Internet at *http://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/ucm049563.htm* (accessed October 22, 2010); "Drug and Biological Product Consolidation," (68 FR 38067, June 26, 2003).

required to provide for a particular drug to meet the statutory standards.

The final rule is consistent with this CDER regulation as it allows the Directors of CBER and CDER flexibility in applying current standards for the approval of an exception or alternative to § 610.15, when data submitted with the request for an exception or alternative, establish the safety, purity, and potency of the biological product.

Further, consistent with existing statutory and regulatory requirements, the Directors of CBER and CDER will not approve a biological product that is unsafe for the intended population. The final rule does not alter these statutory and regulatory requirements nor does it guarantee that a request for an exception or alternative will be approved. The final rule only allows the Director of CBER or CDER the flexibility to approve a manufacturer's request for an exception or alternative if the manufacturer demonstrates that the biological product is safe, pure, and potent for use in the intended population.

With regard to comments expressing concern about the safety of previously licensed vaccines or specific ingredients in previously licensed vaccines, FDA notes that those comments concerning previously licensed vaccines are outside the scope of this rulemaking action because the rule only allows the Director of CBER or CDER to approve a manufacturer's request for an exception or alternative to any requirement in § 610.15, when the data submitted in support of such a request establish the safety, purity, and potency of the biological product.

(Comment 6) One comment opposed the proposed rule because the commenter did not know how FDA would monitor or enforce requirements for adequate storage, aseptic withdrawing techniques, and timely use of vaccines in multiple-dose containers without preservative or if additional training would be given to health care providers.

(Response) In addressing this comment, FDA clarifies that all requests for an exception or alternative are subject to FDA regulations regarding the monitoring and enforcement of regulatory standards. These regulations were established to assure the quality and integrity of data submitted to FDA in support of new product approvals and to protect the rights and welfare of the public. FDA accomplishes this through various means, including conducting onsite inspections, data audits, product testing, and report monitoring. FDA also provides advice through guidances and other communications which are provided to assist interested parties in complying with regulatory standards for the safety, purity, and potency of a product.

(Comment 7) One comment provided alternative revisions to the proposed rule and other subsections within § 610.15. Specifically, the commenter proposed that FDA revise the proposed rule to read as follows:

> Alternatives. Except for the generally accepted standards of purity and quality, in keeping with the vaccine safening mandates set forth in 42 U.S.C. 300aa–27"; * * * "the Director of the Center for Biologics Evaluation and Research or the Director of the Center for Drug Evaluation and Research may approve an exception or alternative to any requirement in this section, provided the manufacturer proves that the exception or alternative would improve the safety of the biological drug product or, failing that, improves the effectiveness, not efficacy, or reduces the per dose cost, of the biological drug product without reducing the safety of said product"; and * * * "include the findings, pro and con, of and the data from all of the studies conducted to support the request.

(Response) FDA acknowledges the comment and appreciates the suggestions for revising § 610.15. However, in accordance with the regulations, FDA is seeking public comment only on the proposed rule to permit the Director of CBER or the Director of CDER, as appropriate, to approve exceptions or alternatives to the regulation for constituent materials. FDA's response to the comments requesting revisions to the proposed rule are discussed in the paragraphs that follow.

FDA disagrees with the commenter's suggested revisions to the proposed rule because the revisions inappropriately limit the application of the rule to vaccines; allow more flexibility than is intended for approving a manufacturer's request for an exception or alternative; may lead to confusion about the rule; and are unnecessary. As discussed previously, the final rule allows the Director of CBER or CDER flexibility to approve a request for an exception or alternative to a requirement under § 610.15 provided that data are submitted that establish the safety, purity, and potency of the specific biological product. These statutory and regulatory requirements apply to the use of constituent materials in all biological products and not just to vaccines as the comment suggests. In addition, FDA may only approve a BLA for a vaccine or other biological product if it has been demonstrated to be "safe, pure, and potent." The commenter's suggestions that FDA should take cost considerations into account when making a decision to approve a vaccine are inconsistent with FDA's regulatory authority. Although FDA is sensitive to issues of cost, current statutory standards for constituent materials are based on the safety, purity, and potency of the product. Furthermore, the suggested revisions to the proposed rule inappropriately limit what FDA may consider with respect to a request for an exception or alternative. Manufacturers are required by current regulations to submit all available data, including adverse event reports, with a BLA. FDA reviews the data to determine whether an application should be approved. The final rule, as consistent with current regulations, does not allow the Director of CBER or CDER to approve an application if the data are not sufficient to establish that the biological product is safe, pure, and potent in relation to the manufacturer's intended use of the product.

IV. Legal Authority

FDA is issuing this regulation under the biological products provisions of the PHS Act (42 U.S.C. 262 and 264) and the drugs and general administrative provisions of the FD&C Act (sections 201, 301, 501, 502, 503, 505, 510, 701, and 704) (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 371, and 374). Under these provisions of the PHS Act and the FD&C Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, and potent; and prevent the introduction, transmission, and spread of communicable disease.

V. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Because the final rule allows the Director of CBER or the Director of CDER, as appropriate, to approve exceptions or alternatives to the regulations for constituent materials, this action increases the flexibility and reduces the regulatory burden for affected entities. Therefore, FDA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The benefit of this regulatory action is its reduction, through greater flexibility in the regulatory requirements, of burdens on the biological products industry. These issues are discussed in greater detail in section I of this document. Industry cost reductions may result in consumers being offered lower prices or wider availability of existing and new biological products; this would have a positive effect on patients' welfare.

Any administrative and paperwork costs associated with this regulatory action are expected to be minimal and widely dispersed among affected entities. Based on FDA experience, we estimate that we would receive a total of approximately three requests annually for an exception or alternative under § 610.15. FDA experience with similar information collection requirements suggests that approximately 1 hour would be required to prepare and submit each such request.

We received comments expressing concern that this rule would generate additional costs in the form of negative public health effects. FDA has considered the potential for adverse consequences, including increased morbidity and mortality, associated with allowing deviations from the constituent materials regulations set forth in § 610.15(a) through (c), and will grant exemptions only in cases where data indicate that biological products in their exempted forms will be safe, pure, and potent for the conditions for which the applicant is seeking approval. As experience with the October 1981 rule has shown, FDA is able to conduct a constituent materials exemption process in a manner that is consistent with its public health mandate. For all these reasons, we believe the final rule will impose no overall public health cost.

B. Environmental Impact

The Agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant adverse effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

Section 610.15(d) of this final rule contains reporting requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507(d) of the Paperwork Reduction Act of 1995. The requirements were approved and assigned OMB control number 0910–0666.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

■ 2. Amend § 610.15 by adding paragraph (d) to read as follows:

§ 610.15 Constituent materials.

* * * * *

(d) The Director of the Center for Biologics Evaluation and Research or the Director of the Center for Drug Evaluation and Research may approve an exception or alternative to any requirement in this section. Requests for such exceptions or alternatives must be in writing.

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8885 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1314

[Docket No. DEA–347I]

RIN 1117–AB30

Self-Certification and Employee Training of Mail-Order Distributors of Scheduled Listed Chemical Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim final rule with request for comment.

SUMMARY: On October 12, 2010, the President signed the Combat Methamphetamine Enhancement Act of 2010 (MEA). It establishes new requirements for mail-order distributors of scheduled listed chemical products. Mail-order distributors must now self-certify to DEA in order to sell scheduled listed chemical products at retail. Sales at retail are those sales intended for personal use; mail-order distributors that sell scheduled listed chemical products not intended for personal use, *e.g.,* sale to a university, are not affected by the new law. This self-certification must include a statement that the mail-order distributor understands each of the requirements that apply under part 1314 and agrees to comply with these requirements. Additionally, mail-order distributors are now required to train their employees prior to self certification. DEA is promulgating this rule to incorporate the statutory provisions and make its regulations consistent with the new requirements

and other existing regulations related to self-certification.

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

Comment Date: Written comments must be postmarked and electronic comments must be submitted on or before June 13, 2011. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–347" on all written and electronic correspondence. Comments may be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received.

Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

DEA's Legal Authority

DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes.

The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity.

The CSA as amended also requires DEA to regulate the manufacture, distribution, importation, and exportation of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On October 12, 2010, the President signed the Combat Methamphetamine Enhancement Act of 2010 (MEA) (Pub. L. 111–268). Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to provide notice of proposed rulemaking and the opportunity for public comment in its regulations implementing an Act of Congress. However, an agency may find good cause to exempt a rule from certain provisions of the APA, including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. DEA is invoking the APA good cause exception and promulgating this rule as an interim final rule rather than a proposed rule because the requirements of the MEA addressed by this rulemaking are self-implementing and changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. The MEA also specifically states that "[t]he Attorney General may issue regulations on an interim basis as necessary to ensure the implementation of this Act by the effective date." Public Law 111–268, Sec. 6(b). DEA is accepting comments on this rulemaking.

Mail-Order Distributor

DEA regulations do not specifically define "mail-order distributor." However, part 1314 of the regulations defines "mail-order sale" as "a retail sale of scheduled listed chemical products for personal use where a regulated person uses or attempts to use the U.S. Postal Service or any private or commercial carrier to deliver the product to the customer." 21 CFR 1314.03. Also, mail-order sale "includes purchase orders submitted by phone,

mail, fax, Internet, or any method other than face-to-face transaction." 21 CFR 1314.03.

The idea of mail-order distributor is further developed later in part 1314, which discusses a "regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03(c) of this chapter to submit a report of the sales transaction to the Administration * * *" 21 CFR 1314.100(a). The CSA (21 U.S.C. 830(b)(3)) and its implementing regulations impose recordkeeping and reporting requirements on "[e]ach regulated person who engages in a transaction with a nonregulated person or who engages in an export transaction that involves ephedrine, pseudoephedrine, phenylpropanolamine, or gamma-hydroxybutyric acid, including drug products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier * * *" 21 CFR 1310.03(c). Such persons are obligated to file monthly reports with DEA. 21 CFR 1310.03(c).

Combat Methamphetamine Enhancement Act of 2010

The MEA amends the CSA to change the regulations for selling scheduled listed chemical products—nonprescription products that contain ephedrine, pseudoephedrine, and phenylpropanolamine, their salts, optical isomers, and salts of optical isomers. The law requires that each regulated person making sales at retail of a scheduled listed chemical product who is required under Title 21 of the United States Code ((21 U.S.C. 830(b)(3)) to submit monthly reports of sales transactions to the Attorney General (referred to as mail-order distributors) may not sell any scheduled listed chemical product at retail unless such regulated person has submitted to the Attorney General a self-certification. Sales at retail are those sales intended for personal use; mail-order distributors that sell scheduled listed chemical products not intended for personal use, *e.g.,* sale to a university, are not affected by the new law. The requirement of self-certification becomes effective April 10, 2011 (180 days after enactment on October 10, 2010). Mail-order distributors must be self-certified before they can sell scheduled listed chemical products. Such self-certification must be consistent with the criteria established for certifications of regulated sellers—*i.e.,* retail stores and mobile retail vendors—of scheduled listed chemical products.

To that end, and pursuant to the requirements of 21 U.S.C. 830(e)(1)(B)(ii)(II), DEA is requiring that each mail-order distributor must be self-certified at each place of business at which they sell these products at retail. For a mail-order distributor, this would mean that each location that prepares or packages product for distribution to customers, and each location where employees accept payment for such sales, must be self-certified.

Pursuant to the requirements of 21 U.S.C. 830(e)(1)(B)(iii)(I) pertaining to regulated sellers, the self-certification for mail-order distributors is required to take place via the Internet on DEA's Web site. Self-certification includes a statement that the mail-order distributors understand the requirements and agree to comply with them. MEA also makes it unlawful to negligently fail to self-certify as required under 21 U.S.C. 830, by an amendment to 21 U.S.C. 842(a)(10). Public Law 111–268, Sec. 5. This applies to regulated sellers and mail-order distributors.

The MEA also includes a provision which states that "[t]he Attorney General shall by regulation establish criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers under paragraph (1)(B)." 21 U.S.C. 830(e)(2)(C), as amended by Public Law 111–268, Sec. 2. This means that mail-order distributors are now required to train their employees prior to self certification.

Provisions of the Combat Methamphetamine Enhancement Act of 2010

Prior to MEA, mail-order distributors of scheduled listed chemical products, which covered any sale where the product is shipped using the Postal Service or any private or commercial carrier, did not have to self-certify. They did have to file monthly reports of all sales of scheduled listed chemical products with DEA, and they were required to verify the identity of their customer before shipping scheduled listed chemical products. 21 U.S.C. 830(b)(3) and 830(e)(2)(A).

Sales of scheduled listed chemical products by mail-order distributors. MEA requires that on and after April 10, 2011, a mail-order distributor must not sell scheduled listed chemical products at retail unless it has self-certified to DEA, through DEA's Web site. The self-certification requires the mail-order distributor to confirm the following:

- Its employees who will be engaged in the sale of scheduled listed chemical products have undergone training regarding provisions of the Combat Methamphetamine Epidemic Act of 2005 (CMEA).
- Records of the training are maintained.
- Sales to individuals do not exceed 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine per day. For mail-order distributors, sales to individuals do not exceed 7.5 grams of ephedrine, pseudoephedrine, or phenylpropanolamine per 30-day period.
- Nonliquid forms are packaged as required. The mail-order distributor must train its employees and self-certify before either the mail-order distributor or individual employees may sell scheduled listed chemical products. The law governing self-certification of mail-order distributors does not explicitly make such certifications subject to 18 U.S.C. 1001, as is the case for regulated sellers whose sales are limited almost exclusively to face-to-face retail transactions. Compare 21 U.S.C. 830(e)(1)(B) to 830(e)(2)(C). However, a mail-order distributor who knowingly or willfully self-certifies to facts that are not true is subject to fines and imprisonment by virtue of general applicability of 18 U.S.C. 1001. Also, when Congress directed that regulations of the Attorney General establish criteria for the certification of mail-order distributors "that are consistent with the criteria established for the certification of regulated sellers under paragraph (1)(B)," it must have intended that this Federal false statements statute apply.

Training. DEA has developed training that it has made available on its Web site (*http://www.deadiversion.usdoj.gov*). Employers must use the content of this training in the training of their employees who sell scheduled listed chemical products. An employer may include content in addition to DEA's content, but DEA's content must be included in the training. For example, a mail-order distributor may elect to incorporate DEA's content into initial training for new employees.

Training records. On and after April 10, 2011, each employee of a mail-order distributor who is responsible for delivering scheduled listed chemical products to purchasers or who deals directly with purchasers by obtaining payment for the scheduled listed chemical products must undergo training and must sign an acknowledgement of training received prior to selling scheduled listed chemical products. This record must be kept in the employee's personnel file.

Self-certification. MEA adds the requirement that mail-order distributors

self-certify with DEA. As noted previously, MEA also makes it unlawful for mail-order distributors to negligently fail to self-certify as required under 21 U.S.C. 830.

On and after April 10, 2011, under the requirements of MEA, mail-order distributors who sell at retail must self-certify to DEA as described above. DEA has established a Web page that will allow mail-order distributors of scheduled listed chemical products to complete the self-certification online and submit it to DEA electronically. A self-certification certificate will immediately be generated by DEA upon receipt of the application. The mail-order distributors will print this self-certification certificate, or if they are unable to print it, DEA will print and mail the certificate to the self-certifier.

Time for self-certification. MEA requires that mail-order distributors self-certify by April 10, 2011. When a regulated person files the initial self-certification, the Administration will assign the regulated person to one of twelve groups. The expiration date of the self-certification for all regulated persons in any group will be the last day of the month designated for that group. In assigning a regulated person to a group, the Administration may select a group with an expiration date that is not less than 12 months or more than 23 months from the date of self-certification. After the initial certification period, the regulated person must update the self-certification annually. It is the responsibility of the mail-order distributor to ensure that they renew the self-certification before it lapses.

Fee for self-certification. To comply with the requirement of the CSA that fees be set at a level to ensure the recovery of the full costs of operating the various aspects of the Diversion Control Program, DEA established an annual self-certification fee for certain regulated sellers selling scheduled listed chemical products at retail. The annual self-certification fee for regulated sellers who are not DEA pharmacy registrants is $21. To make regulations regarding mail-order distributors consistent with those for regulated sellers, the same self-certification fee will apply to any mail-order distributor that is not a DEA-registered pharmacy.

Table 1 summarizes the requirements for mail-order distributors of scheduled listed chemical products that are now in place since the passage of the MEA.

TABLE 1—SUMMARY OF REQUIREMENTS BY TYPE OF SELLER

	Mail-order sellers
Daily sales limit	3.6 gm/chemical.
30-day sales limit	7.5 gm.
Blister packs	Yes.
Storage	NA.
Logbook	NA.
Customer ID	Verify ID.
Train employees	Yes.
Self-Certify	Yes.
Monthly reports	Yes.
Theft and loss reports	Yes.

Discussion of the Rule

To make the rule easier to follow for regulated sellers and mail-order distributors, DEA previously created part 1314 that includes all requirements related to the sale of scheduled listed chemical products to end users. Subpart A contains requirements that apply to any retail sale. Subpart B applies to regulated sellers (retail distributors and mobile retail vendors). Subpart C applies to retail sales that are shipped by mail or private or commercial carriers, regardless of how those sales are ordered.

In Subpart C, Section 1314.101 is being added to address employee training for mail-order distributors. Section 1314.102 is added to address self-certification for mail-order distributors. Section 1314.103 covers the self-certification fee and the time of payment for this fee. As discussed above, DEA is setting an annual period for renewal of the certification. DEA has developed a page on its Web site that will allow mail-order distributors to complete and submit the self-certification form online and print out a self-certification certificate for their records. The information required will include the name and address of the location, a point of contact, and tax identification number.

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a Notice of Proposed Rulemaking in the **Federal Register**. However, the Combat Methamphetamine Enhancement Act specifically states, "[t]he Attorney General may issue regulations on an interim basis as necessary to ensure the implementation of this Act by the effective date." Public Law 111–268, Sec. 6(b). Additionally, the APA provides that agencies may be excepted from this requirement when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

With publication of this interim final rule, DEA is invoking this "good cause" exception to the APA's notice requirement based on the combination of several factors. The MEA is effective 180 days after its passage. Mail-order distributors selling scheduled listed chemical products at retail must self-certify with DEA in order to continue to sell these products. Based on the effective date and the requirements of the MEA, it is impracticable for DEA to comply with the APA's notice and comment requirements due to the limited time involved. Were DEA not to publish this interim final rule with Request for Comment, mail-order distributors selling scheduled listed chemical products at retail would not be able to self-certify by the date specified in the law. As a result, these mail-order distributors would be forced to stop selling scheduled listed chemical products, or violate the law by doing so. Thus, DEA also finds it is contrary to the public interest to DEA to comply with the APA's notice and comment requirements due to the potential disruption of sales of scheduled listed chemical products by mail-order distributors.

In light of these factors, DEA finds that "good cause" exists to issue this interim rule without engaging in traditional notice and comment rulemaking.

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act (RFA) applies to rules that are subject to notice and comment. DEA has determined, as explained above, that public notice and comment are impracticable and contrary to the public interest. Consequently, the RFA does not apply.

Although the RFA does not apply to this interim final rule, DEA has reviewed the potential impacts. DEA does not believe that it will have a significant economic impact on small entities. Based on reports filed, DEA expects that the rule will affect only 9 firms, two of which are not small based on the Small Business Administration's size standards. For the seven small firms, the only costs are the $21 annual fee, the time required to complete the

certification (0.5 hours or about $20 for a new self-certification application), and cost of training (0.5 hours or about $10). The cost of compliance for these firms, which appear to have between 5 and 25 employees, not all of whom would need to be trained, is less than $200 and in most cases, less than $100. The smallest mail order pharmacies (those with fewer than five employees) have average annual sales of $1 million. The cost of compliance is, therefore, less than 0.1 percent of sales and would not impose a significant economic burden on any small entity.

Executive Order 12866

The Deputy Assistant Administrator, Office of Diversion Control, further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is "a significant regulatory action." Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is codifying statutory provisions and involves no agency discretion. However, DEA has reviewed the potential benefits and costs following OMB Circular A–4.

The time for a mail-order distributor to self-certify is estimated at 0.5 hours. Additionally, the time for a mail-order distributor to train employees is estimated at 0.5 hours. The nine affected firms range in size from 5 employees to more than 800. DEA assumes that the smallest firms will train half their employees and the two large firms will train 20 percent, based on the percentage of retail sales persons, order clerks, and order fillers to total employment in the retail mail order sector. The total cost of the rule is estimated to be less than $2,600. DEA does not expect that the rule will lead any of the firms to discontinue sales of the products because they are already reporting to DEA on these sales. The low cost of compliance is unlikely to discourage firms from selling the products.

Benefits. Congress passed the MEA to better track retail sales of scheduled listed chemical products by requiring self-certification of mail-order distributors in addition to regulated sellers (retailers). The MEA also makes it more difficult for regulated sellers and mail-order distributors to obtain scheduled listed chemical products from distributors by prohibiting distributors from selling to them if they have not self-certified. This leaves less opportunity for diversion at the retail level.

Methamphetamine remains the primary drug produced in illicit laboratories within the United States. The vast majority of these laboratories used pharmaceutical products containing pseudoephedrine, ephedrine, and phenylpropanolamine as the source of precursor material.

Conclusion. MEA's requirements will not impose an annual cost on the economy of $100 million or more, the standard for an economically significant rule under Executive Order 12866.

Executive Order 13563

Published on January 18, 2011, Executive Order 13563 supplements and reaffirms the principles established in Executive Order 12866. 76 FR 3821. The new Executive Order emphasizes the importance of public participation and cost-effectiveness within the context of the regulatory process. DEA has carefully considered the requirements of the Executive Order and has concluded that this rule satisfies the applicable requirements. Although the MEA provides authorization to issue rules on an interim basis in order to implement the self-certification requirements of Section 2 of the Act, DEA has requested public comment in order to ensure that its regulatory process maintains a flexible approach and seeks the view of all persons potentially affected by the MEA's requirements. Further, because this rule contains a 60-day comment period and utilizes regulations.gov regarding its rulemaking docket, it complies with the specific requirements of Section 2(b) of the Executive Order. 76 FR 3821, 3822. Finally, DEA believes its rule to be cost-effective and tailored to impose the least possible burden. There are only 9 mail-order distributors that would be affected by this rule and the cost of implementation is low.

Paperwork Reduction Act of 1995

To address the new mandates of MEA, DEA is revising an existing information collection "Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products," Information Collection 1117–0046. MEA requires mail-order distributors to train any employee who will be involved in selling scheduled listed chemical products and to document the training. Mail-order distributors must also self-certify to DEA that all affected employees have been trained and that the mail-order distributor is in compliance with all provisions of the CMEA.

The Department of Justice, Drug Enforcement Administration, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152. Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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 submission of responses.

Overview of Information Collection 1117–0046

(1) *Type of Information Collection:* Revision of an existing collection.

(2) *Title of the Form/Collection:* Self-certification, Training and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:

Form Number: DEA Form 597.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: The Controlled Substances Act mandates that regulated sellers of

scheduled listed chemical products maintain a written or electronic logbook of sales. The CSA also requires that regulated sellers and mail-order distributors retain a record of employee training, and complete a self-certification form verifying the training and compliance with CMEA provisions regarding retail sales of scheduled listed chemical products.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.

As discussed in the previous section, DEA estimates the number of mail-order distributors to be around 9. The average annual burden hour per respondent is 1.8 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 16 hours.

The following table presents the burden hour calculations.

TABLE 2—ESTIMATE OF TOTAL BURDEN HOURS

Activity	Unit burden hour	Number of activities	Total burden hours
Training record	0.05 hour (3 minutes)	410,228	20,511.4
Self-certification (regulated sellers)	0.25 hour (15 minutes)	64,000	16,000
Self-certification (mail-order distributors)	0.5 hours (30 minutes)	9	4.5
Transaction record	0.033 hour (2 minutes)	25,500,000	850,000
Customer time	0.033 hour (2 minutes)	25,500,000	850,000
Total			1,736,515.9

If additional information is required contact: Lynn Murray, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. These requirements, however, are mandated under MEA, and DEA has no authority to alter them or change the preemption. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $126,400,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more. It will not cause a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1314

Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1314 is amended as follows:

PART 1314—RETAIL SALE OF SCHEDULED LISTED CHEMICAL PRODUCTS

■ 1. The authority citation for part 1314 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 842, 871(b), 875, 877, 886a.

■ 2. Section 1314.101 is added to read as follows:

§ 1314.101 Training of sales personnel.

Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03(c) of this chapter to submit a report of the sales transaction to the Administration must ensure that its sales of a scheduled listed chemical product at retail are made in accordance with the following:

(a) In the case of individuals who are responsible for preparing and packaging scheduled listed chemical products for delivery to purchasers through the Postal Service or any private or commercial carrier or who deal either directly or indirectly with purchasers by obtaining payments for the products, the regulated person has submitted to the Administration a self-certification that all such individuals have, in accordance with criteria issued by the Administration, undergone training provided by the regulated person to ensure that the individuals understand the requirements that apply under this part.

(b) The regulated person maintains a copy of each self-certification and all records demonstrating that individuals referred to in paragraph (a) of this section have undergone the training.

■ 3. Section 1314.102 is added to read as follows:

§ 1314.102 Self-certification.

(a) A regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03 of this chapter to submit a report of the sales transaction to the Attorney General must submit to the Administration the self-certification referred to in § 1314.101(a) in order to sell any scheduled listed chemical product. The certification is not effective for purposes of this section unless, in addition to provisions regarding the training of individuals referred to in § 1314.101(a), the certification includes a statement that the regulated person understands each of the requirements that apply in this part and agrees to comply with the requirements.

(b) When a regulated person files the initial self-certification, the Administration will assign the regulated person to one of twelve groups. The expiration date of the self-certification for all regulated persons in any group will be the last day of the month designated for that group. In assigning a regulated person to a group, the Administration may select a group with an expiration date that is not less than 12 months or more than 23 months from

the date of self-certification. After the initial certification period, the regulated person must update the self-certification annually.

(c) The regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03 of this chapter to submit a report of the sales transaction to the Attorney General must provide a separate certification for each place of business at which the regulated person sells scheduled listed chemical products at retail.

■ 4. Section 1314.103 is added to read as follows:

§ 1314.103 Self-certification fee; time and method of fee payment.

(a) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03 of this chapter to submit a report of the sales transaction to the Administration must pay a fee for each self-certification. For each initial application to self-certify, and for the renewal of each existing self-certification, a regulated seller shall pay a fee of $21.

(b) The fee for self-certification shall be waived for any person holding a current, DEA registration in good standing as a pharmacy to dispense controlled substances.

(c) A regulated person shall pay the fee at the time of self-certification.

(d) Payment shall be made by credit card.

(e) The self-certification fee is not refundable.

Dated: April 8, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2011–9016 Filed 4–12–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9515]

RIN 1545–BH20

Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock

Correction

In rule document 2011–4846 appearing on pages 11956–11959 in the issue of Friday, March 4, 2011, make the following corrections:

1. On page 11956, in the third column, under the Background heading, in the third line, "*See*" should read "See".

2. On page 11957, in the first column, in the sixth line from the top, "*See*" should read "See".

PART 1—[CORRECTED]

3. On page 11958, in the first column, in the fourth line, in amendatory instruction 3., "Paragraph (c)(7(iii)" should read "Paragraph (c)(7)(iii)".

§ 1.1502–13 [Corrected]

4. On the same page, in § 1.502–13(c)(7)(ii), in Example 16(b), in the third column, in the 36th line, "*See*" should read "See".

5. On the same page, in § 1.502–13(c)(7)(ii), in Example 17(b), in the third column, in the fourth line from the bottom, "*See*" should read "See".

6. On page 11959, in § 1.502–13(c)(7)(ii), in Example 17(b), in the first column, in the 16th line from the top, "*See*" should read "See".

7. On the same page, in § 1.502–13(c)(7)(iii)(B), in the first column, in the third line, "*see*" should read "see".

8. On the same page, in § 1.502–13(c)(7)(iii)(B), in the first column, in the seventh line, "*see*" should read "see".

§ 1.502–13T [Corrected]

9. On the same page, in § 1.502–13T(a), in the first column, in the second line, "*see*" should read "see".

10. On the same page, in § 1.502–13T(a)(B)(2), in the second column, in the 14th line, "*see*" should read "see".

11. On the same page, in § 1.502–13T, in the second column, in paragraph (f)(5)(ii)(B)(3) through (f)(5)(ii)(E), in the second line, "*see*" should read "see".

12. On the same page, in § 1.502–13T(a)(F)(2), in the second column, in the third line, "*see*" should read "see".

[FR Doc. C1–2011–4846 Filed 4–12–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–1082]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising Anchorage Ground No. 19 located east of the Weehawken-Edgewater Federal Channel on the Hudson River. The revision is necessary to facilitate safe navigation and provide safe and secure anchorages for vessels operating in the area. This action is intended to increase the safety of life and property of both the anchored vessels and those operating in the area as well as to provide for the overall safe and efficient flow of commerce.

DATES: This rule is effective May 13, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1082 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–1082 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone 718–354–4195, e-mail *Jeff.M.Yunker@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 18, 2009, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulations; Port of New York in the **Federal Register** (74 FR 47906). We received one comment on the NPRM. No public meeting was requested and none was held. On April 28, 2010, we published a supplemental notice of proposed rulemaking (SNPRM) entitled Anchorage Regulations; Port of New York in the **Federal Register** (75 FR 22323). We received one comment on the SNPRM. A public meeting was requested by the New York City Department of Parks and Recreation (NYC Parks) but the Coast Guard determined a public meeting was not necessary in this case. Instead, a meeting with representatives from the NYC Parks, Sandy Hook Pilots Association, and U.S. Army Corps of Engineers New York District was held on August 31, 2010, to discuss their comment in relation to commercial

vessel operations in this area of the Hudson River. The results of the meeting are discussed in the *Discussion of Comments and Changes* section.

Basis and Purpose

The Hudson River Pilots Association, through the Port of New York/New Jersey Harbor Safety, Navigation and Operations Committee, has had several discussions with the Coast Guard over the years examining the possibility of relocating Anchorage Ground No. 19; two years ago they requested that the Coast Guard formally revise the boundaries of Anchorage Ground No. 19, which is located on the Hudson River, east of the Weehawken-Edgewater Federal Channel and south of the George Washington Bridge.

Due to severe recurring shoaling within the Weehawken-Edgewater Federal Channel, the Hudson River Pilots requested and received authorization from the Coast Guard and Army Corps of Engineers (ACOE) to pilot vessels through the deeper and safer water located within the boundaries of Anchorage Ground No. 19.

Background

Due to shoaling, the March 2007 ACOE survey verified a controlling depth of 27 feet in the right outside quarter of the Weehawken-Edgewater Federal Channel where vessels bound for ports north of New York City would have to transit. As published by the ACOE Institute for Water Resources, vessels with drafts of up to 34 feet routinely transit the Hudson River. In calendar year 2006, there were 6,562 transits on the Hudson River between the mouth of the Harlem River and Waterford, NY by vessels with a draft of 27 feet or greater. In 2007, the number of transits was 4,120. In 2008, there were 120 transits. Vessels with a draft of 27 feet or greater would be required to transit through the deeper water which is within the current boundaries of Anchorage Ground No. 19.

Anchorage Ground No. 19 is the closest Anchorage Ground available for use when there is no space for temporary anchoring within the Upper New York Bay Anchorage Grounds. Hence, these vessels transit to Anchorage Ground No. 19 to await a berth, or orders, to minimize fuel consumption and provide an orderly flow of commerce within the harbor and the New England region. Tug and barge traffic within the harbor has increased 37% since 1991, concurrently increasing use of the anchorage.

On October 14, 2008, the Coast Guard Captain of the Port New York issued an Advisory Notice notifying the maritime community that, in accordance with 33 CFR 110.155(c)(5)(i), vessels would only be allowed to anchor on the western boundary of Anchorage Ground No. 19. This temporary solution was necessary to facilitate deep draft vessel transits through the eastern portion of Anchorage Ground No. 19.

On September 18, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) titled "Anchorage Regulations; Port of New York" (Docket number USCG–2008–1082) in the **Federal Register** (74 FR 47906). The proposal sought to amend Anchorage Ground No. 19 by dividing it into two separate anchorages (Anchorage Ground No. 19 East and Anchorage Ground No. 19 West), thereby relocating the majority of the anchorage area to the western side of the Hudson River.

The relocation of the anchorage would allow deep draft vessels to transit the deeper water without having to transit through the existing Anchorage Ground No. 19.

In that NPRM, it was stated that the ACOE would relocate the Weehawken-Edgewater Federal Channel to the east of its current location and the Coast Guard would relocate Anchorage Ground No. 19 to the west of its current location.

After the publication of the NPRM, the ACOE advised the Coast Guard that it did not intend to seek Congressional action to de-authorize the Weehawken-Edgewater Federal Channel. However, the ACOE also advised that it does not object to the Coast Guard establishing an Anchorage Ground in the existing Weehawken-Edgewater Federal Channel.

Consequently, to facilitate safe navigation of deep draft vessels, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) titled "Anchorage Regulations; Port of New York" in the **Federal Register** on April 28, 2010 (75 FR 22323) revising its proposal to disestablish Anchorage Ground No. 19 and establish two separate anchorage grounds, Anchorage Ground No. 19 East and Anchorage Ground No. 19 West. This would be accomplished by dividing Anchorage Ground No. 19 into an east and a west portion and relocating the majority of the anchorage area (new Anchorage Ground No. 19 West) from the eastern half of the Hudson River to the western half closer to the New Jersey shore (over the Weehawken-Edgewater Federal Channel). The following graphics display the current boundary of Anchorage Ground No. 19 and the revised boundaries of Anchorage Grounds No. 19 East and No. 19 West:

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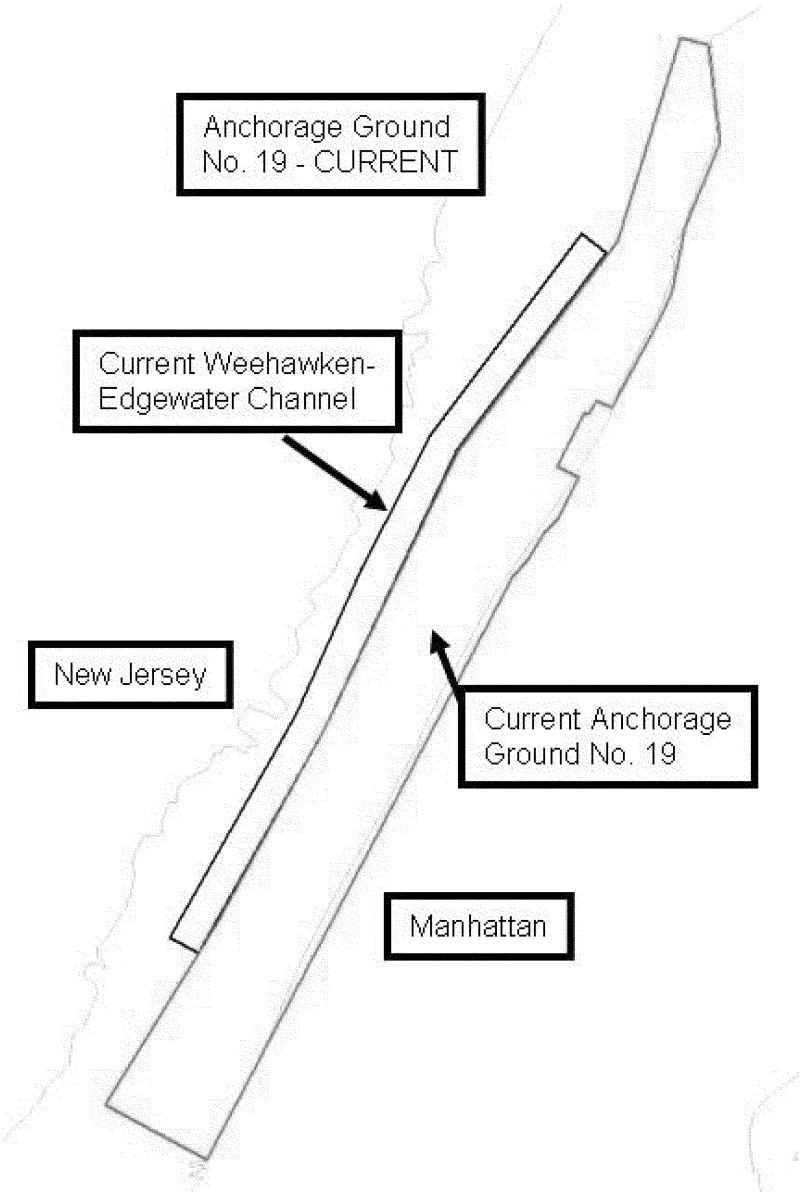
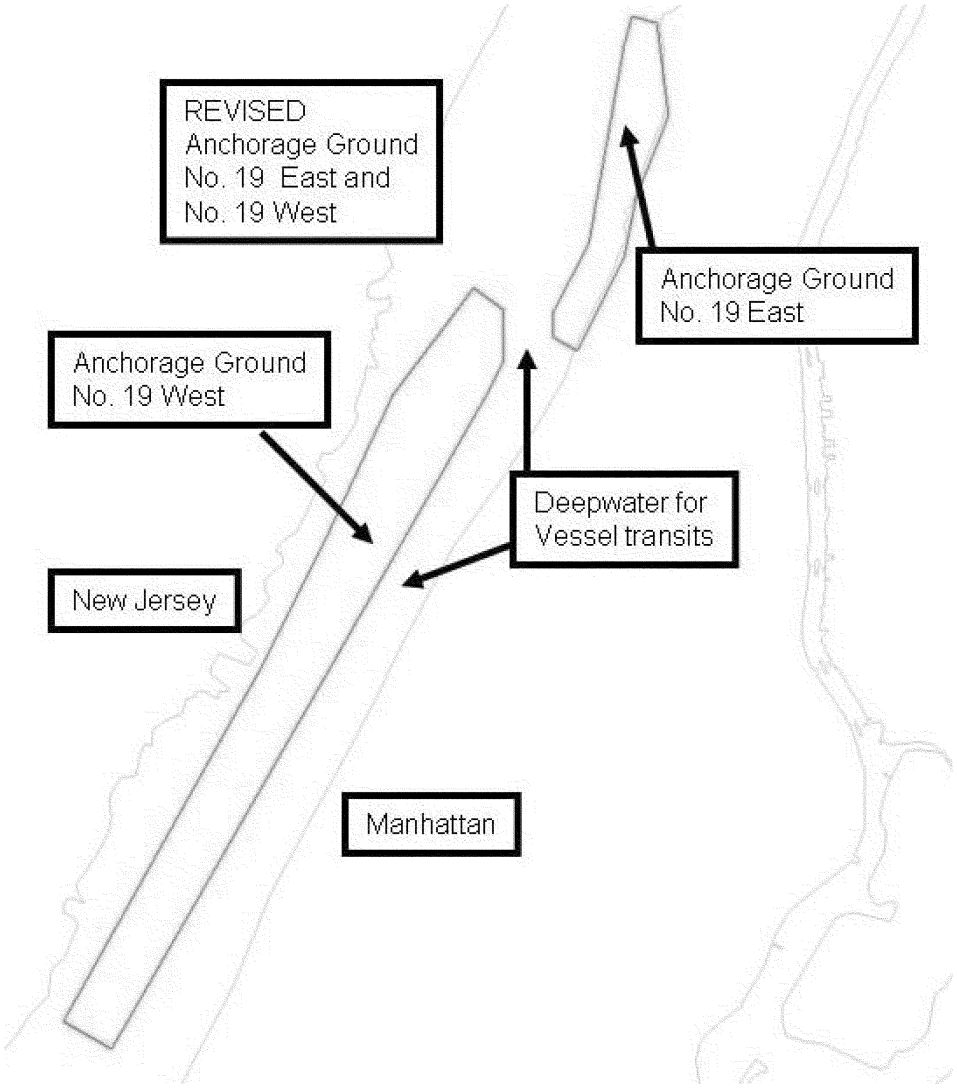

Anchorage Ground
No. 19 - CURRENT
Current Weehawken-
Edgewater Channel
New Jersey
Current Anchorage
Ground No. 19
Manhattan



BILLING CODE 9110–04–C

Disestablishing Anchorage Ground No. 19 and establishing Anchorage Ground No. 19 East and Anchorage Ground No. 19 West creates a 400 yard wide area of deeper water between the newly established anchorage grounds. This change allows deep draft vessels to transit the deeper water of the Hudson River without having to transit through an existing anchorage ground.

The Weehawken-Edgewater Federal Channel is authorized by Congress, and constructed and maintained by the ACOE. The ACOE has advised the Coast Guard that no portion of the Weehawken-Edgewater Federal Channel will be relocated in conjunction with the reapportionment, relocation and establishment of Anchorage Ground No. 19 East and West. The ACOE has further advised that establishment of an anchorage ground in the Weehawken-Edgewater Federal Channel is not expected to impede navigation or result in a need to maintain channel depth because the Weehawken-Edgewater Federal Channel currently supports no commercial vessel traffic.

According to the ACOE the Weehawken-Edgewater Federal Channel was originally intended to support commercial vessel traffic on the New Jersey waterfront in the vicinity of the Channel. However, due to changes in shoreline usage from industrial to residential and recreational, the original intent of the Channel no longer exists. As a result there has not been a need to dredge the Weehawken-Edgewater Federal Channel segment to its authorized depth since it was last dredged in 1994.

The ACOE further advised that it does not appear likely that a need will arise in the foreseeable future to maintain the channel for commercial vessel traffic intending to access New Jersey waterfront and shore facilities. However, should a need recur in the future to accommodate commercial traffic, the use of the areas as anchorage grounds would be re-evaluated.

In the interest of safe navigation and to minimize confusion, the ACOE and the USCG will request that the National Oceanic and Atmospheric Administration (NOAA) remove the Weehawken-Edgewater Federal Channel designation from NOAA charts. In addition, the Coast Guard will request chart corrections removing the Anchorage Ground No. 19 boundary line designation and adding the boundary lines for the revised Anchorage Ground No. 19 East and Anchorage Ground No. 19 West.

Discussion of Comments and Changes

The Coast Guard received one comment on the NPRM from the U.S. Army Corps of Engineers (ACOE). In that NPRM, the Coast Guard stated that the ACOE would relocate the Weehawken-Edgewater Channel to the east of its current location and the Coast Guard would relocate Anchorage

Ground No. 19 to the west of its current location.

After the publication of the NPRM, the ACOE advised the Coast Guard that it did not intend to seek Congressional action to de-authorize the Weehawken-Edgewater Channel. However, the ACOE also advised that it did not object to the Coast Guard establishing an Anchorage Ground in the existing Weehawken-Edgewater Channel.

Consequently, the Coast Guard revised its proposal and published a Supplemental Notice of Proposed Rulemaking (SNPRM) seeking to disestablish Anchorage Ground No. 19 and establish two separate anchorage grounds, Anchorage Ground No. 19 East and Anchorage Ground No. 19 West.

The Coast Guard received one comment on the SNPRM from the New York City Parks and Recreation Department (NYC Parks).

NYC Parks requested clarification that this rulemaking would not impact their recreational mooring fields along the Manhattan shoreline north and south of the 79th Street Boat Basin. NYC Parks is still authorized to administer the mooring fields along the Manhattan shoreline; therefore, the use of these mooring fields will not be affected by this rule. In addition, the Coast Guard will submit chart corrections to be published to identify these mooring fields on government navigation charts.

NYC Parks further requested that the two mooring fields be designated as special anchorage areas as part of the current rule. The Coast Guard is currently reviewing NYC Parks' request to designate the two mooring fields as special anchorage areas; however any designation of the two mooring fields as special anchorage areas would be done as part of a separate rulemaking process.

NYC Parks requested clarification that this rulemaking would potentially eliminate 452 acres of open vessel anchorage area and eliminate the mooring fields north and south of the 79th Street Boat Basin. As stated above the use of the NYC Parks mooring fields will not be affected by this rule. The 452 acres of Anchorage Ground No. 19 being disestablished were intended for the use of commercial shipping and not recreational vessels that use the 79th Street Boat Basin and mooring fields along the Manhattan shoreline.

NYC Parks commented that this rulemaking would potentially jeopardize their ability to fund and service the marina due to the removal of their mooring fields. This rulemaking will not potentially jeopardize NYC Parks' ability to fund and service the marina due to the removal of the mooring fields because the mooring fields are not being removed or impacted in any way.

NYC Parks commented that Riverside Park concessions would be negatively impacted, and Riverside Park itself would lose one of its engaging and popular features. Riverside Park will not be impacted by this rulemaking as NYC Parks is still authorized to administer their mooring fields. Marine events and recreational boating usage will continue to be administered on a not to interfere basis with commercial shipping and Tugs/Barges as stated below.

NYC Parks requested that these rules be revised to protect the right of recreational boaters to use these waters and that the mooring fields be designated as Special Anchorage Areas for these purposes. NYC Parks is still authorized to administer their two mooring fields along the Manhattan shoreline, north and south of the 79th Street Boat Basin. Chart corrections will be submitted by the Coast Guard to display these mooring fields on the navigation charts. In addition, the USCG is reviewing NYC Parks request to establish two Special Anchorage Areas north and south of the 79th Street Boat Basin.

NYC Parks commented that the transit of commercial tugs and barges in closer proximity to the 70-year-old boat basin and mooring fields would exacerbate the damages and impacts caused by large wakes of passing vessels on the Hudson River. At the meeting held with NYC Parks on August 13, 2010, the Sandy Hook Pilots representative stated that they have been piloting vessels along the current route, east of the Weehawken-Edgewater Federal Channel, through Anchorage Ground No. 19, on a continual basis since before the 1970s. In addition, tugs and barges have always been authorized to transit through Anchorage Ground No. 19, whether to anchor in a position near the 79th Street Boat Basin, or to continue their transit through the Hudson River. Since under this rule tugs and barges will be anchoring further away from the 79th Street Boat Basin and deep draft transits through the area are down from previous years, as noted by the ACOE Institute for Water Resources, the Coast Guard believes that this rule will alleviate impacts from wakes on the boat basin and mooring field.

NYC Parks commented that this revision may seriously impact established marine events and a growing number of recreational users in the area. As previously stated the Sandy Hook Pilots have been using this transit route through the current Anchorage Ground No. 19 since before the 1970s. Additionally, the area was always available for use as an Anchorage Ground by vessels not constrained by draft. Marine Event permits have been issued for events held in the Anchorage Ground as long as the participants abided by the Inland Navigation Rules and did not interfere with commercial navigation within the Anchorage Ground.

As previously stated Anchorage Ground No. 19 was established over 20 years prior to the 79th Street Boat Basin and mooring fields. Due to the fluctuation of commercial vessel traffic on the Hudson River, and based upon changing economic conditions, demand for home heating oil, etc, the USCG may not always be able to approve marine event applications in this area of the Hudson River regardless of the Anchorage Ground configuration.

NYC Parks requested a public meeting be held. A public meeting was not held since the written comments clearly expressed the views of the commenter and oral presentations would not aid the rulemaking process.

Finally, this rule intends to reflect and formalize past and current vessel navigation practices through the waters within Anchorage Ground No. 19.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

We expect minimal additional cost impacts to the industry because this rule is not imposing fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. This rule is revising the Anchorage Ground No. 19 in order to facilitate safe navigation and provide safe and secure anchorages for vessels operating in the area. This revision would allow deep draft vessels to transit the deeper water without having to transit through an anchorage ground. This would improve safety for small vessels using the anchorage grounds and would facilitate the transit of deep draft vessels.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the Anchorage Grounds 19 East and 19 West. Vessels intending to anchor in the current Anchorage Ground No. 19 will still be able to anchor in the revised Anchorage Ground No. 19 East or No. 19 West. NYC Parks will still be authorized to administer recreational mooring fields located along the Manhattan shoreline, north and south of the 79th Street Boat Basin. The labeling of these mooring fields on Government navigation charts will create a positive impact in the area by increasing awareness of the location of smaller recreational vessels. Additionally, the recreational vessels will no longer have to maneuver around larger anchored vessels when entering, or departing, the 79th Street Boat Basin or mooring fields.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction as this rule involves changing the size of an existing anchorage ground and dividing it into two separate anchorage areas resulting in a reduction in the overall size of the anchorage areas. An environmental analysis checklist and a categorical exclusion determination are available in

the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.155, by revising paragraph (c)(5) to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(5) Anchorages No. 19 East and 19 West.

(i) Anchorage No. 19 East. All waters of the Hudson River bound by the following points: 40°49′42.6″ N, 073°57′14.7″ W; thence to 40°49′45.9″ N, 073°57′22.0″ W; thence to 40°49′52.0″ N, 073°57′22.0″ W; thence to 40°50′08.3″ N, 073°57′10.8″ W; thence to 40°50′55.4″ N, 073°56′59.7″ W; thence to 40°51′02.5″ N, 073°56′57.4″ W; thence to 40°51′00.8″ N, 073°56′49.4″ W; thence along the shoreline to the point of origin.

(ii) Anchorage No. 19 West. All waters of the Hudson River bound by the following points: 40°46′56.3″ N, 073°59′42.2″ W; thence to 40°47′36.9″ N, 073°59′11.7″ W; thence to 40°49′31.3″ N, 073°57′43.8″ W; thence to 40°49′40.2″ N, 073°57′37.6″ W; thence to 40°49′52.4″ N, 073°57′37.6″ W; thence to 40°49′57.7″ N, 073°57′47.3″ W; thence to 40°49′32.2″ N, 073°58′12.9″ W; thence to 40°49′00.7″ N, 073°58′33.1″ W; thence to 40°48′28.7″ N, 073°58′53.8″ W; thence to 40°47′38.2″ N, 073°59′31.2″ W; thence to 40°47′02.7″ N, 073°59′57.4″ W; thence to the point of origin.

(iii) The following regulations apply to 33 CFR 110.155(c)(5)(i) and (ii):

(A) No vessel may conduct lightering operations in these anchorage grounds without permission from the Captain of the Port. When lightering is authorized, the Captain of the Port New York must be notified at least four hours in advance of a vessel conducting lightering operations as required by 156.118 of this title.

(B) Any vessel conducting lightering or bunkering operations shall display by day a red flag (46 CFR 35.30–1; Pub 102; International Code of Signals signaling instructions) at its mast head or at least 10 feet above the upper deck if the vessel has no mast, and by night the flag must be illuminated by spotlight. These signals shall be in addition to day signals, lights and whistle signals as required by rules 30 (33 U.S.C 2030 and 33 CFR 83.30) and 35 (33 USC 2035 and 33 CFR 83.35) of the Inland Navigation Rules when at anchor in a general anchorage area.

(C) Within an anchorage, fishing and navigation are prohibited within 500 yards of an anchored vessel displaying a red flag.

(D) These anchorage grounds are only authorized for use by tugs and/or barges.

(E) No vessel may occupy this anchorage ground for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

(F) No vessel may anchor in Anchorage No. 19 East or No. 19 West without permission from the Captain of the Port.

(G) Each vessel shall report its position within Anchorage No. 19 East or No. 19 West to the Captain of the Port immediately after anchoring.

(H) All coordinates referenced use datum: NAD 83.

* * * * *

Dated: March 28, 2011.

Daniel A. Neptun,

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

[FR Doc. 2011–8827 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0132]

RIN 1625–AA00

Safety Zone; Boom Days, Buffalo Outer Harbor, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Buffalo Outer Harbor, Buffalo, NY for the Boom Days Fireworks. This zone is intended to restrict vessels from Doug's Dive, the NFTA small boat harbor and a portion of the Buffalo Outer Harbor, Buffalo, NY during the Boom Days Fireworks on April 16, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective on April 16, 2011 from 8 p.m. through 9:30 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0132 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0132 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, e-mail *rory.c.boyle@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because awaiting a comment period to run would be impractical and contrary to the public interest in that it would prevent the Captain of the Port Buffalo from performing the function of keeping the boating public safe from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment. Therefore, awaiting a 30 day effective period to run is impracticable and contrary to the public interest in that it would prevent the Captain of the Port Buffalo from protecting persons and vessels involved in and observing the event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Boom Days is an event established to celebrate the removal of the ice boom in Lake Erie and the beginning of spring. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Boom Days Fireworks. The fireworks display will occur on April 16, 2011 from 8 p.m. through 9:30 p.m. The safety zone will encompass all waters of the NFTA small boat marina known as Doug's Dive and part of the Buffalo Outer Harbor, Buffalo, NY within a 370 foot radius from position 42°50′57.70″ N, 78°51′46.52″ W, 42°50′56.25″ N, 78°51′47.61″ W (NAD 83).

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Buffalo or on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or on-scene representative. The Captain of the Port Buffalo or on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard determined that this rule is not a significant regulatory action because of the minimal time that the area will be restricted. Vessels may still transit with the permission of the Captain of the Port Buffalo or on-scene representative. The Coast Guard expects this area will have an insignificant adverse impact to mariners from the zones activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Buffalo Outer Harbor, Buffalo, NY on April 16, 2011 from 8 p.m. until 9:30 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 90 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0132 to read as follows:

§ 165.T09–0132 Safety zone; Boom Days Fireworks, Buffalo Outer Harbor, Buffalo, NY.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Niagara River, Niagara Falls, NY, within a 370 foot radius from position 42°50′57.70″ N, 78°51′46.52″ W, 42°50′56.25″ N, 78°51′47.61″ W (NAD 83).

(b) *Effective period.* This regulation will be effective and the safety zone enforced from 8 p.m. through 9:30 p.m. on April 16, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf. The on-scene representative of the Captain of the Port Buffalo will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or on-scene representative.

Dated: March 28, 2011.

R.S. Burchell,

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

[FR Doc. 2011–8882 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0131

RIN 1625–AA00

Safety Zone; Boom Days, Niagara River, Niagara Falls, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Niagara River, Niagara Falls, NY for the Boom Days Fireworks. This zone is intended to restrict vessels from La Salle Marina and a portion of the Niagara River, Niagara Falls, NY during the Boom Days Fireworks on April 16, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective on April 16, 2011 from 8 p.m. through 9:30 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0131 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0131 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST3 Rory Boyle, Marine Events Coordinator, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, e-mail *rory.c.boyle@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment

pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because awaiting a comment period to run would be impractical and contrary to the public interest in that it would prevent the Captain of the Port Buffalo from performing the function of keeping the boating public safe from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment. Therefore, awaiting a 30 day effective period to run is impracticable and contrary to the public interest in that it would prevent the Captain of the Port Buffalo from protecting persons and vessels involved in and observing the event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Boom Days is an event established to celebrate the removal of the ice boom in Lake Erie and the beginning of spring. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Boom Days Fireworks. The fireworks display will occur on April 16, 2011 from 8:30 p.m. through 9 p.m. The safety zone will encompass all waters of La Salle Marina and part of the Niagara River, Niagara Falls, NY within a 210 foot radius from position 43°4′24.02″ N, 78°59′9.18″ W (NAD 83).

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or on-scene representative. The Captain of the Port Buffalo or on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard determined that this rule is not a significant regulatory action because of the minimal time that the area will be restricted. Vessels may still transit with the permission of the Captain of the Port Buffalo or designated on-scene representative. The Coast Guard expects this area will have an insignificant adverse impact to mariners from the zones activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Niagara River, Niagara Falls, NY on April 16, 2011 from 8 p.m. until 9:30 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 90 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0131 to read as follows:

§ 165.T09–0131 Safety zone; Boom Days Fireworks, Niagara River, Niagara Falls, NY.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Niagara River, Niagara Falls, NY, within a 210 foot radius from position 43°4′24.02″ N 78°59′9.18″ W (NAD 83).

(b) *Effective period.* This regulation will be effective and the safety zone enforced from 8:00 p.m. until 9:30 p.m. on April 16, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Buffalo will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or on-scene representative.

Dated: March 28, 2011.

R.S. Burchell,

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

[FR Doc. 2011–8884 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

[Docket ID ED–2010–OPE–0004]

RIN 1840–AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On October 29, 2010, the Department of Education published in the **Federal Register** (75 FR 66832) final regulations for improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal

Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs. This document makes several corrections to the October 29 final regulations, including in the preamble discussion and the regulatory text.

DATES: Effective July 1, 2011, except that the corrections to § 668.58 are effective July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Marty Guthrie, U.S. Department of Education, 1990 K Street, NW., room 8042, Washington, DC 20006–8014. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@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:

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Corrections to Preamble Discussion

1. On page 66857, in the third column, in the fourth full paragraph labeled as the *Discussion* section, the words "enrolled in payment periods or assigned to the 2011–12 and subsequent award years" are corrected to read "enrolled in payment periods assigned to the 2011–12 and subsequent award years".

2. On page 66858, in the first column, in the second paragraph labeled as *Discussion,* the last sentence of that paragraph is corrected by adding the words "do not" between the words "regulations" and "require", so that the sentence reads: "While these final regulations do not require the creation of a State licensing agency, a State may choose to rely on such an agency to legally authorize institutions to offer postsecondary education in the State for purposes of Federal program eligibility."

3. On page 66862, the chart and its notes are removed and the following corrected chart and notes are added in their place to clarify the items in the third column labeled "Approval or licensure process" that correspond to Business entities and Charitable organizations and to correct the third bulleted note:

MEETS STATE AUTHORIZATION REQUIREMENTS *

Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

* Notes:
- Federal, tribal, and religious institutions are exempt from these requirements.
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
- The chart does not take into account requirements related to State reciprocity.

4. On page 66862, in the first column, under the heading *Institutions considered legally authorized under amended § 600.9,* the fourth bullet is corrected by adding the words "by name" prior to the period of the first sentence so that it reads: "A nonprofit institution has a State charter as a postsecondary institution by name."

5. On page 66865, in the second column, the words "by name" are removed from the eighth line in the column so the affected sentence reads: "We have amended proposed § 600.9 to provide that, if an institution is an entity that is established by name as an educational institution by the State and the State further requires compliance with applicable State approval or licensure requirements for the institution to qualify as legally authorized by the State for Federal program purposes, the State may exempt the institution from the State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies

recognized by the Secretary or based upon the institution being in operation for at least 20 years."

6. On page 66873, in the first column, under the paragraph labeled as (2), the sentence is corrected by adding the words "or entity" between the words "person" and "based", so that the sentence reads: "Whether the commission, bonus, or other incentive payment is provided to any person or entity based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid."

7. On page 66876, in the third column, under the paragraph labeled as (2), the sentence is corrected by adding the words "or entity" between the words "person" and "based", so that the sentence reads: "Whether the commission, bonus, or other incentive payment is provided to any person or entity based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid."

8. On page 66878, in the first column, in the paragraphs labeled as the *Discussion* section, in the third paragraph, the sentence is corrected by adding the words "or entity" after the word "person" and deleting the words "who is", so that the sentence reads: "For this reason, we are making a change to § 668.14(b)(22)(ii) to provide that institutions may make payments, including profit-sharing payments, so long as they are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds."

9. On page 66878, in the paragraph labeled *Changes* that begins at the bottom of the first column, the sentence is corrected by adding the words "or entity" after the word "person" and deleting the words "who is", so that the sentence reads: "We have revised § 668.14(b)(22)(ii) to clarify that, notwithstanding the ban in § 668.14(b)(22)(i), eligible institutions, organizations that are contractors to eligible institutions, and other entities may make profit-sharing payments, so long as such payments are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds."

10. On page 66895, in the third column, in the first paragraph, the words "or a second disbursement of Pell Grant funds," are removed so that the sentence reads: "If the student has not begun attendance in enough courses to establish a half-time enrollment status, the institution may not make a first disbursement of a Direct Loan to the student (34 CFR 685.303(b)(2)(i)), although the funds are included as aid that could have been disbursed in the Return of Title IV Funds calculation."

11. On page 66916, the paragraph labeled *Discussion* that begins at the bottom of the second column and ends in the third column is removed and the following corrected *Discussion* is added in its place to read as follows:

"*Discussion:* As noted elsewhere in this preamble, the Department enforces its regulations, including those in subpart F of part 668 within a rule of reasonableness. We strongly believe that the concerns voiced by many commenters have ignored this fact. For this reason, we agree to limit the reach of the ban on making substantial misrepresentations to statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services. We have done this by narrowing the language in § 668.71(b) and the definition of the term *misrepresentation.* As a result, statements made by students through social media outlets will generally not be covered by these misrepresentation regulations. Also, statements made by entities that have agreements with the institution to provide services, such as food service, other than educational programs, marketing, advertising, recruiting, or admissions services will generally not be covered by these misrepresentation regulations."

12. On page 66917, in the third column, the third paragraph is corrected to read as follows:

"With regard to the commenters who stated that the 'capacity, likelihood, or tendency to deceive or confuse' language will be confusing, in general, we have no reason to believe that this language will have any such effect. However, we recognize that the word 'capacity' is subject to a broad range of interpretations, so we have revised the regulations to state that a misleading statement is one that has the tendency or likelihood to deceive or confuse."

13. On page 66918, in the first column, the *Changes* paragraph incorrectly indicated that no changes were made to § 668.71(c). That paragraph is corrected to read as follows:

"*Changes:* We have revised § 668.71(c) to state that a misleading statement is one that has the tendency or likelihood to deceive or confuse."

Corrections to Regulatory Text

§ 668.8 [Corrected]

■ 14. On page 66950, in the second column, the introductory text of § 668.8(l)(2) is corrected by adding the word "not" between the words "has" and "identified".

§ 668.14 [Corrected]

■ 15. On page 66950, in the third column, § 668.14(b)(22)(ii)(B) is corrected by:

■ (A) Adding the words "or entity" after the word "person".

■ (B) Removing the words "who is".

§ 668.58 [Corrected]

■ 16. On page 66957, in the first column, § 668.58(a)(1)(iii) is corrected by removing the word "certified".

■ 17. On page 66957, in the second column, § 668.58(a)(2)(iii)(B) is corrected by removing the words "Subsidized Stafford Loan or".

■ 18. On page 66957, in the second column, § 668.58(a)(3)(ii)(C) is corrected by removing the words "Subsidized Stafford Loan or".

Dated: April 7, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–8747 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[EPA–HQ–OAR–2009–0837; FRL–9280–9]

RIN 2060–AQ06

Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing

Correction

In rule document 2011–6216 appearing on pages 17288–17325 in the issue of Monday, March 28, 2011, make the following correction:

Appendix D to Part 75 [Corrected]

On page 17324, the heading of Appendix D is corrected to read:

Appendix D to Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Peaking Units

[FR Doc. C1–2011–6216 Filed 4–12–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0063; FRL–8867–5]

Etoxazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project #4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 13, 2011. Objections and requests for hearings must be received on or before June 13, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0063. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0063 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 13, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0063, by one of the following methods:

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of May 19, 2010 (75 FR 28009) (FRL–8823–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7675) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the miticide/ovicide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on peppers, African eggplant, eggplant, martynia, okra, pea eggplant, pepino, roselle, and scarlet eggplant at 0.20 ppm; Crop Group 9: Cucurbit vegetables at 0.20 ppm; Subgroup 13–07A: Caneberry at 1.1 ppm; Subgroup 13–07F: Small fruit vine climbing subgroup except fuzzy kiwi at 0.50 ppm; Subgroup 13–07G: Low-growing berry subgroup at 0.50 ppm and avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, and mamey sapote at 0.20 ppm; and tea at 15 ppm. The petition also proposed to delete the established tolerances in or on strawberry, grape, cucumber, and vegetable, cucurbit subgroup 9A since

they would be covered by the proposed new tolerances. That notice referenced a summary of the petition prepared by Valent, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the tolerances are being set and is setting a subgroup tolerance instead of separate tolerances for some commodities. It was also determined that the proposed deletion of the cucurbit subgroup 9A and establishment of a tolerance for the cucurbit vegetables crop group 9 could not be done due to differences in tolerance levels between subgroups 9A and 9B. Finally, the tolerance expression is being revised to be consistent with current Agency policy. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The existing etoxazole data indicate that it possesses low acute toxicity via all routes of exposure. It is not an eye or dermal irritant or a dermal sensitizer. No toxicity was seen at the limit dose in a 28-day dermal toxicity study in rats.

The liver is the main target organ in mice, rats and dogs. In a 90-day toxicity study in dogs, increased liver weights and centrilobular hepatocellular swelling in the liver were observed. Similar effects were observed in a chronic toxicity study in dogs at similar doses, indicating that systemic effects (mainly liver effects) occur at similar dose levels following short- through long-term exposure without increasing in severity. In a 90-day toxicity study in mice, hepatotoxicity (increased relative liver weight, liver enlargement, and centrilobular hepatocellular swelling) was observed at high doses. Similar effects were observed at the high dose in a mouse carcinogenicity study. Subchronic and chronic toxicity studies in rats produced similar effects (increased liver weights, centrilobular hepatocellular swelling, *etc.*) to those seen in mice and dogs. In addition, slight increases in thyroid weights and incisors were observed in subchronic and chronic toxicity studies in rats at high doses and at terminal stages of the study. Toxicity was not observed at the highest dose tested (HDT) in another carcinogenicity study in mice. There is no evidence of immunotoxicity or neurotoxicity in any of the submitted studies.

Two studies in mice showed no evidence of carcinogenicity up to the HDT. In a rat carcinogenicity study, which was deemed unacceptable due to inadequate dosing, benign interstitial cell tumors (testis) and pancreas benign islet cell adenomas were observed (in females) at the high dose. These effects were not observed in an acceptable carcinogenicity study in rats at higher doses. In special mechanistic male rat studies there were no observable changes in serum hormone levels (estradiol, luteinizing hormone (LH), prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis) noted. EPA classified etoxazole as "not likely to be carcinogenic to humans." Etoxazole is not mutagenic.

The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. The rabbit developmental toxicity study included maternal toxic effects (liver enlargement, decreased weight gain, and decreased food consumption) at the same dose as developmental effects (increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs). In the 2-generation reproduction study conducted with rats, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose, indicating increased qualitative susceptibility.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2010–0063 in the document titled Etoxazole; "Human Health Risk Assessment for Proposed Tolerances and Uses on Peppers (Bell and Non-bell); Squash/Cucumbers (Subgroup 9B); Avocado; Tropical and Subtropical Fruits (Inedible Peel); Caneberry Subgroup 13–07A; Small Fruit Vine Climbing, Except Kiwifruit, Subgroup 13–07F; Low-growing Berry, Subgroup 13–07G; and Tea," pp. 29–31.

B. Toxicological Points of Departure/Levels of Concern

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

estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for etoxazole used for human risk assessment is shown in the following Table:

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age and general population including infants and children).	A dose and endpoint attributable to a single dose were not identified in the database including the developmental toxicity studies.		
Chronic dietary (All populations)	NOAEL = 4.62 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.046 mg/kg/day ... cPAD = 0.046 mg/kg/day	Chronic Oral Toxicity Study-Dog LOAEL = 23.5 mg/kg/day based upon increased alkaline phosphatase activity, increased liver weights, liver enlargement (females), and incidences of centrilobular hepatocellular swelling in the liver.
Cancer (Oral, dermal, inhalation) ..	Classification: "Not likely to be Carcinogenic to Humans."		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in 40 CFR 180.593. EPA assessed dietary exposures from etoxazole in food as follows:

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

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

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys for Food Intake by Individuals (CSFII). As to residue levels in food, an unrefined, chronic dietary exposure assessment was performed for the general U.S. population and various population subgroups using tolerance-level residues for all agricultural commodities and 100 percent crop treated (PCT).

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, Cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that etoxazole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of etoxazole for chronic exposures for non-cancer assessments are estimated to be 4.761 parts per billion (ppb) for surface water and 0.318 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Etoxazole is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found etoxazole to share a common mechanism of toxicity with any other substances, and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that etoxazole does not have a

common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. In a rat reproduction study, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose; thereby indicating increased qualitative susceptibility. Based on the concerns in this unit, a Degree of Concern Analysis was performed by EPA, which concluded that concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur at the same dose as parental toxicity; and

iii. The doses selected for various risk assessment scenarios are lower (~3000-fold lower) than the doses that caused offspring toxicity in the rat 2-generation reproduction study. Therefore, the endpoints selected for risk assessment are protective of the effects seen in the rat reproduction study.

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

i. The toxicity database for etoxazole is complete except for acute and subchronic neurotoxicity and immunotoxicity studies. Changes to 40 CFR 180.158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. Although these studies are not yet available for etoxazole, the available data do not show any evidence of treatment-related effects on the immune system. Further, there is no evidence of neurotoxicity in any study in the toxicity database for etoxazole. Therefore, EPA does not believe that conducting neurotoxicity and immunotoxicity studies will result in a NOAEL lower than the NOAEL of 4.62 mg/kg/day already established for etoxazole. Consequently, an additional database uncertainty factor does not need to be applied.

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

iii. Although there is qualitative evidence of increased susceptibility of offspring (pup mortality) compared to less severe parental effects (increased liver and adrenal weights) at the same dose in the rat multi-generation reproduction study, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs (10× for interspecies variation and 10× for intraspecies variation) to be used in the risk assessment. Therefore, there are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to etoxazole in drinking water. These assessments will not underestimate the exposure and risks posed by etoxazole.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 11% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole.

3. *Short and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and/or intermediate-term adverse effect was identified; however, etoxazole is not registered for any use patterns that would result in short- and/or intermediate-term residential exposure. Short- and/or intermediate-term risk is assessed based on short- and/or intermediate term residential exposure plus chronic dietary exposure. Because there is no short- and/or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and/or intermediate-term risk), no further assessment of short- and/or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and/or intermediate-term risk for etoxazole.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, etoxazole is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (gas chromatography/nitrogen-phosphorus detection (GC/NPD) and gas chromatography/mass selective detection (GC/MSD) methods) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical

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

B. International Residue Limits

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

The Codex has not established MRLs for etoxazole for the commodities discussed in this document.

C. Response to Comments

EPA received a comment from a private citizen expressing concerns for genetically modified vegetables and undue risks from pesticides. However, this action does not involve use of genetically modified vegetables. Additionally, when new or amended tolerances are requested for the presence of the residues of a pesticide and its toxicologically significant metabolite(s) in food or feed, the Agency, as is required by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), estimates the risk of the potential exposure to these residues by performing an aggregate risk assessment. Such a risk assessment integrates the individual assessments that are conducted for food, drinking water, and residential exposures. Additionally, the Agency, as is further required by section 408 of the FFDCA, considers available information concerning what are termed the cumulative toxicological effects of the residues of that pesticide and of other substances having a common mechanism of toxicity with it. The Agency has concluded after this assessment that there is a reasonable certainty that no harm will result from exposure to the residues of interest. Therefore, the proposed tolerances are found to be acceptable. These assessments consider body residue loads of the pesticide, as well as available information concerning the potential that other substances have a common mechanism of toxicity, in reaching a conclusion as to whether or not the reasonable certainty of no harm decision can be made.

D. Revisions to Petitioned-for Tolerances

Upon review of the data supporting the petition, EPA revised the tolerance for caneberry subgroup 13–07A from 1.1 ppm to 1.5 ppm based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data.

The Agency also corrected the commodity definition from "fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit" to "fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F."

EPA has also determined that the petitioned-for tolerance on tea at 15 ppm should be established as a tolerance with no U.S. registrations on tea, dried at 15 ppm. At least one U.S. residue field trial study is required to establish a domestic registration on tea; however, no U.S. residue field trial data were submitted in support of the use of etoxazole on tea. Therefore, the Agency has established a tolerance with no U.S. registrations on tea, dried at 15 ppm.

Additionally, IR–4 petitioned for individual tolerances on peppers, African eggplant, eggplant, martynia, okra, pea eggplant, pepino, roselle, and scarlet eggplant (PP 9E7675). In the **Federal Register** of December 8, 2010 (75 FR 76284–76292) (FRL–8853–8), EPA issued a final rule that revised the crop grouping regulations. As part of this action, EPA retained the pre-existing Crop Group 8 and added a new group titled "Crop Group 8–10 Fruiting Vegetable Group." The new crop group 8–10 added new commodities and created new subgroups (including a subgroup consisting of the commodities requested in PP 9E7675). EPA indicated in the December 8, 2010 final rule as well as the earlier January 6, 2010 proposed rule (75 FR 807) (FRL–8801–2) that, for existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. Therefore, consistent with this rule, EPA is establishing a tolerance on the pepper/eggplant subgroup 8–10B. EPA concludes it is reasonable to establish the tolerance on the newly created subgroup, since the individual commodities for which tolerances were requested are identical to those which comprise the pepper/eggplant subgroup 8–10B.

Also, because of differences in the tolerance levels between subgroup 9A (melon subgroup) and 9B (squash/ cucumber subgroup), the two cannot be combined into a single tolerance under Crop Group 9 Cucurbit Vegetables as proposed in the petition. Accordingly, other than the nomenclature change to the existing subgroup 9A tolerance noted below, EPA is leaving the existing subgroup 9A tolerance intact and adding a new tolerance for subgroup 9B. In order to use the correct nomenclature, the existing tolerance for "vegetable, cucurbit subgroup 9A" is being re-named "melon subgroup 9A."

Finally, EPA has revised the tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of etoxazole not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on pepper/ eggplant subgroup 8–10B at 0.20 ppm; tea, dried at15 ppm; berry, low growing, subgroup 13–07G at 0.50 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.50 ppm; squash/cucumber subgroup 9B at 0.02 ppm; avocado at 0.20 ppm; papaya at 0.20 ppm; star apple at 0.20 ppm; sapote, black at 0.20 ppm; mango at 0.20 ppm; sapodilla at 0.20 ppm; canistel at 0.20 ppm; sapote, mamey at 0.20 ppm; and caneberry subgroup 13–07A at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety*

Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 1, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.593 is amended by:
■ i. Revising the introductory text in paragraph (a);
■ ii. Removing the commodities "Cucumber," "Grape" and "Strawberry" from the table in paragraph (a);
■ iii. Revising the entry "Vegetable, cucurbit subgroup 9A" to read "Melon subgroup 9A" in the table; and
■ iv. Alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of etoxazole, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only etoxazole (2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole) in or on the commodity.

Commodity	Parts per million
* * * * *	
Avocado	0.20
Berry, low growing, subgroup 13–07G	0.50
Caneberry subgroup 13–07A	1.5
Canistel	0.20
* * * * *	
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.50
Mango	0.20
Melon subgroup 9A	0.20
* * * * *	
Papaya	0.20
Pepper/eggplant subgroup 8–10B	0.20
* * * * *	
Sapodilla	0.20
Sapote, black	0.20
Sapote, mamey	0.20
* * * * *	
Squash/cucumber subgroup 9B	0.02
Star apple	0.20
* * * * *	
Tea, dried*	15
* * * * *	

*There are currently no U.S. registrations for tea as of April 13, 2011.

* * * * *

[FR Doc. 2011–8550 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0274; FRL–8868–4]

Escherichia coli O157:H7 Specific Bacteriophages; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria when applied/used on food contact surfaces in food processing plants in accordance with the terms of Experimental Use Permit (EUP) No. 74234–EUP–2. Intralytix, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria. The temporary tolerance exemption expires on April 1, 2013.

DATES: This regulation is effective April 13, 2011. Objections and requests for hearings must be received on or before June 13, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0274. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tracy Lantz, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6415; e-mail address: *lantz.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0274 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 13, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0274, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of May 5, 2010 (75 FR 24692) (FRL–8820–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9G7585) by Intralytix, Inc., 701 East Pratt Street, Baltimore, MD 21202. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Escherichia coli* O157:H7 Specific Bacteriophages. This notice referenced a summary of the petition prepared by the petitioner Intralytix, Inc., which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe " to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *" Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other

exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Phages are naturally occurring viruses infecting bacteria. They are found in soil and water and in association with plants and animals, including humans. Bacteriophages are obligate parasites of bacteria, which means they attach to, infect, and reproduce in bacteria. Phages are host-specific for bacteria, with specific bacteriophages attacking only one bacterial species and most frequently only one strain within a bacterial species. As such, phages do not attack other beneficial bacteria. In addition, there is no evidence for bacteriophages infecting any other life form, including humans, except bacteria. Thus, non-target organisms, such as mammals, birds, fish, plants, and other wildlife, are not affected by exposure to bacteriophages. Humans and other animals commonly consume bacteriophages as they are abundantly found in water, on plant surfaces, and in foods such as ground beef, pork sausage, chicken, oysters, cheese, fresh mushrooms, and lettuce. In addition, phages are common commensals of the human gut and likely play an important role in regulating populations of various bacteria in the gastrointestinal tract. As cited in public literature, phages have been used for more than 80 years as therapeutic agents with no ill effects and are active against bacteria that cause many infections and human diseases.

Since bacteriophage do not infect humans, there is not a human health risk concern from the bacteriophages themselves. The potential concerns for human health risk from bacteriophages relate to their interaction with the bacteria they infect. If bacteriophage do not lyse (*i.e.,* break open) the bacterial cell they infect, there is a possibility the cell will survive the infection and incorporate any DNA carried by the bacteriophage in its genome (*i.e.* lysogenize). If genes for shigatoxins I and II, often associated with pathogenic strains of *Escherichia coli* O157:H7, are carried by a lysogenized bacteriophage into an atoxigenic *Escherichia coli,* there is a possibility, in theory, to convert a commensal and harmless bacterium into a pathogen. This theoretical risk is handled in three ways for this tolerance exemption: (1) Only lytic bacteriophage are used; (2) bacteriophage covered by this tolerance exemption are DNA sequenced to ensure they do not have the ability to convey shigatoxins I and II; and (3) host bacteria used to grow bacteriophage also are atoxigenic in that they do not carry DNA sequences capable of shigatoxin production.

To address the infectivity and toxicity endpoints for oral, pulmonary, and injection exposures, the petitioner provided publicly available information documenting a lack of mammalian toxicity or infectivity associated with bacteriophages due to the specificity of bacteriophages attachment and attack to a narrow range of bacterial strains. As a result, the public literature demonstrates that phages pose little to no risk to humans even with the known wide exposure in food and the environment.

Based on the published literature and information submitted in accordance with the Tier I toxicology data requirements set forth in 40 CFR 158.2140(c), the Tier II and Tier III toxicology data requirements also set forth therein were not triggered and, therefore, not required in connection with this action.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* All phages, including those at issue in this action, are similar in nature in that they are host-specific, attacking only bacteria. Published literature submitted by the registrant, and other publically available literature, indicate that humans are exposed to phages daily, and these phages are commonly found in humans, having no known adverse effects. Indeed, humans and other animals routinely consume phages when they eat food such as raw produce and cheese. For example, it is reported that 1,000 (10^3) to 5×10^5 phages can be isolated routinely per gram (g) of high quality cheese. Pathogenic microorganisms are often found in foods; therefore, it is not surprising that one study found *Escherichia coli* and coliphages in 11 of 12 foods purchased at retail markets. In this study, 10 purchases of each of the 12 foods were made. All 10 of the fresh ground beef purchases were contaminated with *Escherichia coli,* and all 10 contained coliphages. In addition to ground beef, *Escherichia coli* and coliphages were found in chicken, fresh pork, fresh oyster, fresh mushrooms, lettuce, chicken pot pie, biscuit dough, deli loaf, deli roasted turkey, and package roasted chicken. Another example of phages in food has been *Propionibacterium freundenreichii* phage found in concentrations as high as 1.4×10^6/gm of swiss cheese.

The use of the bacteriophages covered by this tolerance in food processing plants on food contact surfaces could result in some residues of these bacteriophages on food. The Agency anticipates that food coming into contact with these surfaces could get residues of the phages on them and foods with *Escherichia coli* O157:H7 may end up with more phages on them as the bacteriophages covered by this tolerance exemption infect the bacteria and produce progeny.

2. *Drinking water exposure.* The *Escherichia coli* bacteriophages covered by this tolerance exemption are not intended for use in drinking water, nor are the approved uses likely to result in these bacteriophages reaching surface water or ground water that might be used as drinking water. Use sites are only for food processing facilities.

B. Other Non-Occupational Exposure

Since *Escherichia coli* bacteriophages subject to this tolerance exemption are only intended to be applied to food contact surfaces in food processing plants, the potential for non-occupational, non-dietary exposures (*i.e.,* dermal and inhalation exposures) to these phages by the general population, including infants and children, is highly unlikely.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria to

share a common mechanism of toxicity with any other substances. Moreover, bacteriophage that meet these conditions do not appear to produce a toxic metabolite produced by other substances. Therefore, for the purposes of this action, EPA has assumed that lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

A. U.S. Population

Based on the fact that bacteriophages are host-specific and do not cause harm to human health, except in theoretical instances that the Agency is avoiding through its conditions on this exemption, there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

B. Infants and Children

FFDCA section 408 (b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for children. MOEs, which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis or by using uncertainty factors in calculating a dose level that poses no appreciable risk. As previously mentioned in the toxicological profile, humans, including infants and children, have been exposed to phages generally through food and water, where they are commonly found, and through decades of therapeutic use, with no known or reported adverse effects. Based on all available information, the Agency concludes that lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria are non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children, and adults when lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria are used as labeled, the Agency concludes that the additional MOE is not necessary to protect infants and children and that not adding any additional MOE will be safe for infants and children.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria.

C. Revisions to Petitioned-for Tolerances

In its petition PP 9G7585, Intralytix requested that the Agency establish a tolerance exemption for residues of *Escherichia coli* O157:H7 specific bacteriophages. The Agency is narrowing the scope of the tolerance exemption to residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria because that is the category of bacteriophages for which the Agency can make a safety finding.

VIII. Conclusion

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria, including all anticipated dietary exposures and all other exposures for which there is reliable information, when used according to label directions, as a microbial on food contact surfaces in food processing plants. Therefore, a temporary exemption is established for residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria.

IX. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes,

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

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

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 5, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1301 to subpart D to read as follows:

§ 180.1301 *Escherichia coli* O157:H7 specific bacteriophages; temporary exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of lytic bacteriophages that are specific to *Escherichia coli* O157:H7, sequence negative for shiga toxins I and II, and grown on atoxigenic host bacteria when used/applied on food contact surfaces in food processing plants in accordance with the terms of Experimental Use Permit (EUP) No. 74234–EUP–2. This temporary exemption expires on April 1, 2013.

[FR Doc. 2011–8712 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9291–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Deletion of the Spiegelberg Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of the Spiegelberg Landfill Superfund Site (Site), located in Green Oak Township, Michigan from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Michigan through the Michigan Department of Environmental Quality (MDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective June 13, 2011 unless EPA receives adverse comments by May 13, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail:* Howard Caine, Remedial Project Manager, at *caine.howard@epa.gov* or Cheryl Allen, Community Involvement Coordinator, at *allen.cheryl@epa.gov.*
- *Fax:* Gladys Beard, Deletion Process Manager, at (312) 697–2077.
- *Mail:* Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353–9685; or Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353–6196 or (800) 621–8431.
- *Hand delivery:* Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. 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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be 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 the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

- U.S. Environmental Protection Agency-Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
- Hamburg Township Library, 10411 Merrill Road, P.O. Box 247, Hamburg, MI 48139, Phone: (810) 231–1771. Hours: Monday through Thursday, 9 a.m. to 8 p.m.; Friday 12 p.m. to 6 p.m. and Saturday 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353–9685, *caine.howard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 5 is publishing this direct final Notice of Deletion of the Spiegelberg Landfill Superfund Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective June 13, 2011 unless EPA receives adverse comments by May 13, 2011. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register.** If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent To Delete and the comments already received. There will be no additional opportunity to comment.

Section II., of this document explains the criteria for deleting sites from the NPL. Section III., discusses procedures that EPA is using for this action. Section IV., discusses the Spiegelberg Landfill Site and demonstrates how it meets the deletion criteria. Section V., discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Michigan prior to developing this direct final Notice of Deletion and the Notice of Intent To Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent To Delete prior to their publication today, and the State, through the MDEQ, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent To Delete is being published in a major local newspaper, the Livingston Daily News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent To Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

Site Background and History

The privately owned Spiegelberg property consists of approximately 115 acres and is located on Spicer Road about 40 miles west of Detroit and 5 miles south of Brighton, in Green Oak Township, Livingston County, Michigan. A rental home and barn are located on the northwest corner of the property. Gravel mining at this property

predated 1940, and continues through the present time. The property is surrounded by woods, open fields, and rural residences.

A paint sludge disposal area covered a section of about one-half acre in the northern third of the property at the base of a sand and gravel quarry. Resulting soil and groundwater contamination became the Spiegelberg Landfill Superfund Site (EPA ID: MID980794481). While the entire Spiegelberg property is 115 acres, the Spiegelberg Landfill Superfund site is approximately 2½ acres (including the extent of the groundwater contamination under the ½-acre paint sludge disposal area) and is a subset of the Spiegelberg property. A map of the Spiegelberg Landfill site is located in the deletion docket.

The site was proposed to the NPL on December 30, 1982 (47 FR 58476) and was finalized on the NPL on September 8, 1983 (48 FR 40658). There is potential for redevelopment at this site, but any redevelopment on the site would be subject to ensuring that there is no interfering with the current remedy at the adjacent Rasmussen's Dump Superfund Site.

Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigation (RI) was initiated in May 1984. Sampling and analysis of subsurface soils in the paint sludge area indicated the presence of high concentrations of organic and inorganic compounds from the Hazardous Substances List (HSL) also known as the contaminants of concern (COCs). The HSL chemicals included acetone, 2-butanone, benzene, toluene, xylenes, 1,1,1,-trichloroethane, 1,1-dichloroethane, 4-methyl-2-pentanone, ethybenzene, chlorobenzene, bis(2-ethylhexyl)phthalate, di-N-octyl phthalate, di-N-buty phthalate, chloroethane, 2-hexanone, cadmium, nickel, and lead. The detection of organic constituents in downgradient monitoring wells and the mobility characteristics of the compounds found in the paint sludge area indicated transport via groundwater was a major potential pathway at the site. The results indicated the need for a remedial action which addresses source control of the paint sludge and contaminated soils contained in the paint sludge disposal area on the site, in order to reduce or eliminate exposure of potential receptors to site contaminants. Additional field work was conducted to address the groundwater portion of this investigation. In September 1988, the Michigan Department of Natural Resources (MDNR) and EPA issued a Remedial Investigation Report and Risk Assessment for both the Spiegelberg and Rasmussen's Dump Superfund sites due to their proximity to one another. During the investigation, the areas of concern identified for the Spiegelberg site were: (1) Operable Unit 1 (OU1)—The Paint Sludge Disposal Area and associated contaminated soils, and (2) Operable Unit 2 (OU2)—The Groundwater Contamination Plume resulting from the Paint Sludge Disposal Area. The groundwater contamination plume originated from the contaminated soils and waste materials in the paint sludge disposal area.

The contaminated groundwater plume was defined as an area of contamination approximately 500 feet by 200 feet flowing in a north/northwesterly direction from the paint sludge area. It was estimated that 3.77 million cubic feet of contaminated groundwater existed beneath the site. Upper and lower aquifers are present and are separated by a discontinuous clay layer. Contaminants had migrated from the upper aquifer to the lower aquifer. Groundwater flow rate was calculated as 266 feet per year in the upper aquifer and 131 feet per year in the lower aquifer.

The Feasibility Study evaluated remedial alternatives for addressing site contamination. The primary threat from the paint sludge disposal area to public health was by ingestion of contaminated groundwater. There was a potential for continued migration of contamination downward into residential drinking water wells.

Selected Remedy

1986 Record of Decision (ROD) Findings

The remedy chosen in the September 30, 1986 ROD was to address the OU1—Paint Sludge Area source material. The recommended and selected remedial action for source materials was excavation, offsite incineration, and landfill disposal. The remedial action objective (RAO) of the action was to remove the source of continued contaminant migration from the site. This alternative included excavation of 15,000 cubic yards of waste material and separating it into liquid sludges, paint residue with garbage intermixed, and solid paint sludges. At the time of the FS, it was estimated there were about 5,000 cubic yards of the combined material to be incinerated and 10,000 cubic yards of solid paint sludge to be landfilled in a RCRA licensed landfill. The material was transported to the incineration site and the landfill site by truck.

1990 ROD Findings

The remedy chosen in the June 29, 1990 ROD to address the OU2 groundwater contamination included groundwater extraction followed by on-site treatment with re-injection of treated groundwater. The RAOs of the groundwater remedy were to eliminate the potential for human exposure to remaining hazardous substances, which may occur due to ingestion of contaminated site groundwater and to address all potential risks to human health and/or impacts to the environment. The area of attainment, as defined in the ROD, extends throughout the plume in the upper and lower aquifers in the area underlying and surrounding the Spiegelberg site.

The major components of the treatment included the following: removal of inorganic contaminants by chemical precipitation followed by pH adjustment; removal of the bulk of the organic contaminants, including ketones, by a biological treatment system; and removal of residual organic contaminants via granular activated carbon. Treated groundwater was discharged via injection wells. Deed restrictions and/or other institutional controls to prevent unacceptable exposure and to ensure the integrity of the remedy were also required.

1991 and 1998 ESD Findings

An explanation significant differences (ESD) issued in 1991 changed the OU2 ROD cleanup standards for toluene and xylene to 800 ppb and 300 ppb respectively. A subsequent ESD was signed on October 22, 1998 which changed the remedy to intermittent pumping and semi-annual sampling events based on monitoring results which showed only trace contamination was present in the groundwater plume. The second ESD changed the sampling schedule from quarterly to semi-annual sampling in the Operational and Monitoring Plan.

Response Actions

EPA issued a July 8, 1991 Unilateral Order (UAO) to the Potentially Responsible Parties (PRPs) to conduct the Remedial Design/Remedial Action. An amendment to the Unilateral Order was issued by EPA on August 28, 1991. The UAO Amendment modified the "Parties Bound" which required that the UAO be recorded with each parcel of land, modified the definition of "Facility" and modified the Quality Assurance requirements.

The remedial activities designed and eventually implemented by the PRPs included:

• Procurement and implementation of the institutional controls in 1991 for the purpose of preventing interference with the performance of the remedial action. In general, this includes no use that could cause exposure of humans or animals to contaminated groundwater: no use of the real estate that will interfere with the remedial action; and, no residential or commercial use of that part of the real estate that would allow continued presence of humans;

• Implementation of a Remedial Design (RD) Data Collection Program confirming the hydrogeologic site characterization and chemical characterization of groundwater, and conducting field tests and treatability studies. The results of the RD Data Collection Program supplemented the existing site data and were used to design the treatment system and extraction/injection well networks;

• Construction of a groundwater extraction system to capture and extract groundwater for treatment from the affected groundwater zones;

• Construction of a groundwater treatment plant to treat the extracted groundwater prior to reinjection;

• Construction of a groundwater injection system to discharge the treated groundwater. The injection system provided for a "closed loop" system and enhanced movement of the affected groundwater towards the extraction wells;

• Construction of fencing to secure the constructed treatment plant;

• Implementation of all operation, maintenance, and monitoring activities for the constructed remedial action activities including, but not limited to, operation and maintenance of the groundwater treatment plant and monitoring the progress of groundwater remediation; and

• Implementation of a residential well monitoring program.

The PRPs were also required to prepare and submit: Design Plans and Specifications; Operation and Maintenance Plan; Project Schedule; Construction Quality Assurance Plan; Construction Health and Safety Plan, Design Phases; and a Community Relations Support Program.

Paint Sludge Disposal Area (OU1)

The remedy for source control commenced on August 10, 1989. The remedy was implemented by the Ford Motor Company pursuant to the December 1988 Consent Decree. The paint sludge was excavated to the surveyed groundwater level and to the visual lateral extent of the waste. Clean soil from the cutback around the periphery of the paint sludge pit was placed on the soil storage cell and used for backfill at the completion of the source control activities. From August 14, 1989 to September 20, 1989 a total of 817 loads of paint sludge and debris totaling 19,300 tons were transported and disposed of at Wayne Disposal, an off-site RCRA Subtitle C landfill. From September 20, 1989 to October 23 1989 a total of 1,217 loads of subsoil totaling 29,600 tons were transported and disposed of at Wayne Disposal. From October 24, 1989 to November 15, 1989 a total of 425 loads of subsoil totaling 9,600 tons were transported and disposed of at CID Landfill located in Chicago, Illinois. Thirty-three drums of liquid wastes were disposed at Chemical Waste Management located in Chicago, Illinois, an off-site incinerator. Four gas cylinders were disposed at AQUA–TECH Laboratories in Texas.

Project closeout activities included backfilling operations, final grading, disposal of decontamination wash waters, and the removal of all site facilities including all concrete pads, construction trailers, and fencing. According to CRA Progress Report No. 11, excavation, transport, and disposal of soil underlying the paint sludge area was completed on November 15, 1989. Excavation of soil was completed to groundwater at the northern portion of the paint sludge disposal area on November 15, 1989. The area was surveyed prior to backfilling to document the limit of excavation. The limits of excavation were agreed to by the CRA Engineer and the MDNR Project Coordinator. No soil remediation confirmation samples were collected since the source was excavated to groundwater. It was determined that the monitoring of groundwater concentrations would provide data to ensure that all source materials had been addressed. Backfilling commenced on November 16, 1989. The final site inspection was completed by the MDNR Project Coordinator and EPA Remedial Project Manager on February 9, 1990 following demobilization activities.

Groundwater (OU2)

Remedial actions began in November 1994 after testing and operating an on-site pump and treat treatment pilot plant. Construction activities included: site clearing and degrading; installation of extraction and reinjection wells and associated piping systems; installation of process equipment for treating the contaminated groundwater; access road upgrade; and fencing around the treatment facility. A pre-final inspection of the construction activities was conducted by the MDNR and EPA remedial project managers and the EPA oversight contractor on June 9, 1995. During the pre-final inspection it was determined that the extraction, reinjection, and treatment systems were constructed as designed and were operational. With the completion of construction at OU2, the site was designated construction complete with the signing of the Preliminary Close-Out Report on June 29, 1995. Upon signature of the ESD in 1998, the pump and treat system operation was suspended because groundwater concentrations were below cleanup levels but would be reactivated if contaminant concentrations exceeded risk-based cleanup levels.

Cleanup Goals

All paint sludge and contaminated soils in the paint sludge pit were removed and the excavation extended down to groundwater in accordance with the 1986 ROD. The 1990 ROD for groundwater restoration has been completed. Groundwater treatment has restored the aquifer to cleanup standards. Those cleanup levels are listed in the following table:

Chemical	Cleanup level part per billion (ppb)
Benzene	1.2
Vinyl Chloride	0.5
2-Butanone	350
2-Hexanone	50
Toluene	800
Xylenes	300
Lead	5

The confirmation monitoring period consisted of twelve monitoring events from wells in the shallow and deep aquifer both within the former footprint of the source area and downgradient of the source area. The sampling was conducted from September 1998 to December 2004. The monitoring results have demonstrated continued compliance with the 1998 Cleanup Standards and have established that the Site has achieved groundwater cleanup goals established in the 1990 ROD and modified in the 1991 and 1998 ESDs. No COCs have been found above clean up levels since 1998. A Final Close Out was approved by EPA on July 19, 2010.

Operation and Maintenance

The pump and treat system operation took place from June 1995 through September 1998. Intermittent operation of the groundwater remediation system occurred from September 1998 through August 2004. EPA approved the PRPs' Operating Plan on September 14, 1998. This plan called for confirmatory

hydraulic monitoring, additional hydrogeologic investigations, installation of additional monitoring wells, and a contingency plan. The confirmatory sampling report was submitted in January 1999 and the hydraulic investigation results were submitted in April 1999. The results of volatile organic compounds (VOCs) analysis from all groundwater monitoring events post intermittent pumping mode have shown no exceedences of contaminant concentrations in either the upper or lower aquifers above the established cleanup levels.

There are two deed restrictions associated with the entire Spiegelberg property and encompass the former footprint of the landfill. One deed restriction prohibits activities on the Spiegelberg Site that may interfere with the remedy. The Site is cleaned up; therefore, this deed restriction can be removed from the property. There is a second deed restriction on the Spiegelberg property for the adjoining Rasmussen's Dump Superfund Site remedy. This deed restriction prohibits interfering with existing or future monitoring wells on the Spiegelberg property needed to implement and monitor the Rasmussen's Dump Site groundwater remedy. These deed restrictions are not required for the Spiegelberg CERCLA remedy; however the second institutional control related to the Rasmussen's Dump Site will remain in place until the contaminated groundwater from the Rasmussen's Dump Site is remediated.

No operation and maintenance is needed for the Spiegelberg Site since the remedial actions restored both site-related contaminated soils and groundwater to levels that allow for unlimited use and unrestricted exposure. Any monitoring done at the Spiegelberg property is done in conjunction with the Rasmussen's Dump Superfund Site remedy.

Five-Year Review

Five-Year Review (FYR) reports were written in 2000 and 2005. The 2000 FYR concluded that the implemented remedy is protective of human health and the environment. The on-site groundwater treatment system was operating as described in the Spiegelberg Landfill Site ROD. This FYR recommended continuing the monitoring requirements from the Statement of Work (SOW) which included four consecutive semi-annual sampling events. The confirmation monitoring period consisted of twelve monitoring events from September 1998 to December 2004.

The 2005 FYR also found the remedy to be protective of human health and the environment. It concluded that the confirmation monitoring period (post intermittent pumping monitoring) included twelve monitoring events since 1998, to demonstrate continued compliance with the 1998 groundwater Cleanup Standards. The 2005 FYR also concluded, "This is the final Five-Year Review for the Spiegelberg Site. Groundwater treatment has restored the aquifer to clean-up standards. Delisting, more formally known as Deletion from the NPL, should be evaluated and pursued as appropriate."

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of this site from the NPL are available to the public in the information repositories and at *http://www.regulations.gov*.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Michigan, has determined that the responsible parties have implemented all required response actions and that no further response action by responsible parties is appropriate.

V. Deletion Action

The EPA, with concurrence from State of Michigan through the MDEQ, has determined that all appropriate response actions under CERCLA have been completed. EPA received concurrence from the State of Michigan on December 17, 2010. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective June 13, 2011 unless EPA receives adverse comments by May 13, 2011. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 5, 2011.

Susan Hedman,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing "Spiegelberg Landfill, Green Oak Township, MI."

[FR Doc. 2011–8879 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1042

Control of Emissions From New and In-Use Marine Compression-Ignition Engines and Vessels

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 1000 to End, revised as of July 1, 2010, on page 240, in § 1042.901, the definition of "New vessel" is reinstated to read as follows:

§ 1042.901 Definitions.

* * * * *

New vessel means any of the following:

(1) A vessel for which the ultimate purchaser has never received the equitable or legal title. The vessel is no longer new when the ultimate purchaser receives this title or it is placed into service, whichever comes first.

(2) For vessels with no Category 3 engines, a vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel, excluding temporary modifications (as defined in this section). The value of the modification is the difference in the assessed value of the vessel before the modification and the assessed value of the vessel after the

modification. The vessel is no longer new when it is placed into service. Use the following equation to determine if the fractional value of the modification exceeds 50 percent:

Percent of value = [(Value after modification)(Value before modification)] × 100% ÷ (Value after modification)

(3) For vessels with Category 3 engines, a vessel that has undergone a modification that substantially alters the dimensions or carrying capacity of the vessel, changes the type of vessel, or substantially prolongs the vessel's life.

(4) An imported vessel that has already been placed into service, where it has an engine not covered by a certificate of conformity issued under this part at the time of importation that was manufactured after the requirements of this part start to apply (see § 1042.1).

* * * * *

[FR Doc. 2011–8794 Filed 4–12–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1181]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho:					
Ada	Unincorporated areas of Ada County (10–10–0128P).	Oct. 25, 2010, Nov. 1, 2010, *The Idaho Statesman.*	Mr. Fred Tilman, Chairman, Ada County Board of Commissioners, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	March 1, 2011	160001
Ada	City of Meridian (10–10–0128P).	Oct. 25, 2010, Nov. 1, 2010, *The Idaho Statesman.*	The Honorable Tammy de Weerd, Mayor, City of Meridian, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642.	March 1, 2011	160180
Illinois:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
DuPage	Village of Woodridge (10–05–5743P).	Nov. 25, 2010, Dec 2, 2010, *The Bugle Newspaper*.	The Honorable William F. Murphy, Mayor, Village of Woodridge, 5 Plaza Drive, Woodridge, IL 60517.	November 12, 2010	170737
Will	Village of Bolingbrook (10–05–5743P).	Nov. 25, 2010, Dec. 2, 2010, *The Bugle Newspaper*.	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	November 12, 2010	170812
DuPage	Unincorporated areas of DuPage County (10–05–1256P).	Dec. 13, 2010, Dec. 20, 2010, *The Daily Herald*.	Mr. Robert J. Schillerstrom, Chairman, DuPage County Board, Jack T. Knuepfer Administration Building, 421 North County Farm Road, Wheaton, IL 60187.	April 19, 2011	170197
DuPage	City of Darien (10–05–1256P).	Dec. 13, 2010, Dec. 20, 2010, *The Daily Herald*.	The Honorable Kathleen A. Weaver, Mayor, City of Darien, 1702 Plainfield Road, Darien, IL 60561.	April 19, 2011	170750
Kansas: Johnson	City of Lenexa (10–07–0912P).	Nov. 30, 2010, Dec. 7, 2010, *The Legal Record*.	The Honorable Michael Boehm, Mayor, City of Lenexa, 12350 West 87th Street Parkway, Lenexa, KS 66215.	April 6, 2011	200168
Massachusetts:					
Bristol	Town of Swansea (10–01–1791P).	Oct. 20, 2010, Oct. 27, 2010, *The Spectator*.	Mr. M. Scott Ventura, Chairman, Board of Selectmen, Swansea Town Hall Annex, 68 Stevens Road, Swansea, MA 02777.	October 4, 2010	255221
Bristol	Town of Easton (11–01–0022P).	Nov. 1, 2010, Nov. 8, 2010, *The Enterprise News*.	Mr. David Colton, Town of Easton Administrator, 136 Elm Street, Easton, MA 02356.	October 26, 2010	250053
Bristol	Town of Easton (11–01–0021P).	Nov. 15, 2010, Nov. 22, 2010, *The Enterprise News*.	Mr. David Colton, Town of Easton Administrator, 136 Elm Street, Easton, MA 02356.	November 2, 2010	250053
Michigan: Bay	Township of Frankenlust (09–05–6111P).	Oct. 7, 2010, Oct. 14, 2010, *The Bay City Democrat* & *The Bay County Legal News*.	Mr. Ronald Campbell, Township of Frankenlust Supervisor, 2401 Delta Road, Bay City, MI 48706.	February 11, 2011	260022
Minnesota:					
Olmsted	City of Rochester (10–05–2736P).	Oct. 7, 2010, Oct. 14, 2010, *The Rochester Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, 201 4th Street Southeast, Room 281, Rochester, MN 55904.	February 11, 2011	275246
Olmsted	Unincorporated areas of Olmsted County (10–05–2736P).	Oct. 7, 2010, Oct. 14, 2010, *The Rochester Post-Bulletin*.	Mr. Richard G. Delvin, Olmsted County Administrator, 151 Southeast 4th Street, Rochester, MN 55904.	February 11, 2011	270626
Anoka	City of Centerville (10–05–2774P).	Oct. 27, 2010, Nov. 10, 2010, *The Citizen*.	The Honorable Mary Capra, Mayor, City of Centerville, 1880 Main Street, Centerville, MN 55038.	March 10, 2011	270008
Missouri:					
Phelps	City of Rolla (10–07–0319P).	Dec. 13, 2010, Dec. 20, 2010, *The Rolla Daily News*.	The Honorable William S. Jenks, III, Mayor, City of Rolla, 901 North Elm Street, Rolla, MO 65401.	April 19, 2011	290285
St. Charles	Unincorporated areas of St. Charles County (10–07–1774P).	December 15, 2010, Dec. 22, 2010, *The Suburban Journals of St., Charles County*.	Mr. Steve Ehlmann, St. Charles County Executive, 100 North 3rd Street, St. Charles, MO 63301.	December 1, 2010	290315
St. Charles	City of St. Peters (10–07–1774P).	Dec. 15, 2010, Dec. 22, 2010, *The Suburban Journals of St. Charles County*.	The Honorable Len Pagano, Mayor, City of St. Peters, 1 St. Peters Centre Boulevard, St. Peters, MO 63376.	December 1, 2010	290319
Ohio: Summit	City of Akron (10–05–5693P).	Nov. 29, 2010, Dec. 6, 2010, *The Akron Legal News*.	The Honorable Donald L. Plusquellic, Mayor, City of Akron, 166 South High Street, Room 200, Akron, OH 44308.	December 17, 2010	390523
Wisconsin:					
Waukesha	City of New Berlin (10–05–2901P).	Oct. 21, 2010, Oct. 28, 2010, *My Community Now—Southwest*.	The Honorable Jack F. Chiovatero, Mayor, City of Berlin, 3805 South Casper Drive, New Berlin, WI 53151.	October 4, 2010	550487
Green	Unincorporated areas of Green County (10–05–1296P).	October 21, 2010, Oct. 28, 2010, *The Post Messenger Recorder*.	Mr. Arthur Carter, Chairman, Green County Board, 1016 16th Avenue, Monroe, WI 53566.	February 18, 2011	550157
Green	Village of New Glarus (10–05–1296P).	Oct. 21, 2010, Oct. 28, 2010, *The Post Messenger Recorder*.	Mr. Jim Salter, President, Village of New Glarus Board, 319 2nd Street, P.O. Box 399, New Glarus, WI 53574.	February 18, 2011	550164
Washington	Unincorporated areas of Washington County (10–05–2489P).	Nov. 9, 2010, Nov. 16, 2010, *The West Bend Daily News*.	Mr. Herbert J. Tennies, Chairperson, Washington County, P.O. Box 1986, 432 East Washington Street, West Bend, WI 53095.	March 16, 2010	550471

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–8853 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1180]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
Kane	Unincorporated areas of Kane County (10–05–2793P).	Aug. 19, 2010, Aug. 26, 2010, *The Fox Valley Labor News.*	Ms. Karen McConnaughay Chairman, Kane County Board, 719 South Batavia Avenue, Geneva, IL 60134.	December 28, 2010	170896
Kane	Village of Hampshire (10–05–2793P).	Aug. 19, 2010, Aug. 26, 2010, *The Fox Valley Labor News.*	Mr. Jeffrey Magnussen, President, Village of Hampshire, 234 South State Street, P.O. Box 457, Hampshire, IL 60140.	December 28, 2010	170327
Kane	Village of Huntley (10–05–2793P).	Aug. 23, 2010, Aug. 30, 2010, *The Northwest Herald.*	The Honorable Charles H. Saas, Mayor, Village of Huntley, 10987 Main Street, Huntley, IL 60142.	December 28, 2010	170480
Kane	Village of Huntley (10–05–2799P).	Aug. 16, 2010, Aug. 23, 2010, *The Northwest Herald.*	The Honorable Charles H. Saas, Mayor, Village of Huntley, 10987 Main Street, Huntley, IL 60142.	December 21, 2010	170480

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kane	Unincorporated areas of Kane County (10–05–2799P).	Aug. 12, 2010, Aug. 19, 2010, *The Fox Valley Labor News*.	Ms. Karen McConnaughay, Chairman, Kane County Board, 719 South Batavia Avenue, Geneva, IL 60134.	December 21, 2010	170896
Kane	Village of Gilberts (10–05–2799P).	Aug. 16, 2010, Aug. 23, 2010, *The Daily Herald*.	The Honorable Rick Zirk, President, Village of Gilberts, 87 Galligan Road, Gilberts, IL 60136.	December 21, 2010	170326
McHenry	Unincorporated areas of McHenry County (10–05–3025P).	Sept. 15, 2010, Sept. 22, 2010, *The Woodstock Independent*.	Mr. Ken A. Koehler, Chairman, McHenry County Board, 2200 North Seminary Avenue, Woodstock, IL 60098.	January 20, 2011	170732
McHenry	City of Woodstock (10–05–3025P).	Sept. 15, 2010, Sept. 22, 2010, *The Woodstock Independent*.	The Honorable Dr. Brian Sager, Mayor, City of Woodstock, 811 Regina Court, Woodstock, IL 60098.	January 20, 2011	170488
Kansas:					
Johnson	City of Leawood (10–07–0270P).	Aug. 25, 2010, Sept. 1, 2010, *Sun Publications*.	The Honorable Peggy J. Dunn, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, KS 66211.	August 11, 2010	200167
Johnson	City of Overland Park (10–07–0270P).	Aug. 25, 2010, Sept. 1, 2010, *Sun Publications*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	August 11, 2010	200174
Missouri:					
Phelps	City of Rolla (10–07–0800P).	Sept. 27, 2010, October 4, 2010, *The Rolla Daily News*.	The Honorable William S. Jenks, III, Mayor, City of Rolla, 901 North Elm Street, Rolla, MO 65401.	February 2, 2011	290285
Phelps	Unincorporated areas of Phelps County (10–07–0800P).	Sept. 27, 2010, October 4, 2010, *The Rolla Daily News*.	The Honorable Randy Verkamp, Presiding Commissioner, Phelps County, 200 North Main Street, Rolla, MO 65401.	February 2, 2011	290284
New Hampshire: Hillsborough.	City of Manchester (10–01–1093P).	July 29, 2010, Aug. 5, 2010, *The Union Leader Newspaper*.	The Honorable Ted Gatsas, Mayor, City of Manchester, One City Hall Plaza, Manchester, NH 03101.	December 3, 2010	330169
Ohio:					
Greene	Unincorporated areas of Greene County (10–05–2633P).	Aug. 24, 2010, Aug. 31, 2010, *The Greene County Daily*.	The Honorable Rick Perales, Greene County Commissioner, 35 Greene Street, Xenia, OH 45385.	December 29, 2010	390193
Greene	City of Bellbrook (10–05–2633P).	Aug. 24, 2010, Aug. 31, 2010, *The Greene County Daily*.	The Honorable Mary Graves, Mayor, City of Bellbrook, 15 East Franklin Street, 2nd Floor, Bellbrook, OH 45305.	December 29, 2010	390194
Lorain	City of Elyria (09–05–6438P).	Aug. 26, 2010, Sept. 2, 2010, *The Chronicle-Telegram*.	The Honorable William M. Grace, Mayor, City of Elyria, 131 Court Street, Elyria, OH 44035.	January 3, 2011	390350
Delaware	Unincorporated areas of Delaware County (10–05–4584P).	Sept. 15, 2010, Sept. 22, 2010, *Westerville News and Public Opinions*.	Mr. Tommy Thompson, Delaware County Commissioner, 101 North Sandusky Street, Delaware, OH 43015.	January 20, 2011	390146
Franklin	City of Westerville (10–05–4584P).	Sept. 15, 2010, Sept. 22, 2010, *The Columbus Dispatch*.	The Honorable Kathy Cocuzzi, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	January 20, 2011	390179
Wisconsin:					
Manitowoc	Unincorporated areas of Manitowoc County (10–05–2864P).	Sept. 13, 2010, Sept. 20, 2010, *The Herald-Times-Reporter*.	Mr. Bob Ziegelbauer, Manitowoc County Executive, Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	January 18, 2011	550236
Dane	City of Sun Prairie (10–05–3124P).	Sept. 23, 2010, Sept. 30, 2010, *The Star*.	The Honorable Joe Chase, Mayor, City of Sun Prairie, 300 East Main Street, Sun Prairie, WI 53590.	August 30, 2010	550573

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–8840 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive

Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1172).	City of Peoria (10–09–1908P).	Oct. 21, 2010, Oct. 28, 2010, *The Arizona Business Gazette.*	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	October 15, 2010	040050
Maricopa (FEMA Docket No.: B–1172).	Unincorporated areas of Maricopa County (10–09–1908P).	Oct. 21, 2010, Oct. 28, 2010, *The Arizona Business Gazette.*	Mr. Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 15, 2010	040037
Maricopa (FEMA Docket No.: B–1165).	Unincorporated areas of Maricopa County (10–09–1720P).	Sept. 30, 2010, Oct. 7, 2010, *The Arizona Business Gazette.*	Mr. Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	February 4, 2011	040037
Yavapai (FEMA Docket No.: B–1165).	City of Prescott (10–09–0220P).	Oct. 8, 2010, Oct. 15, 2010, *The Daily Courier.*	The Honorable Marlin Kuykendall, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86302.	February 14, 2011	040098
Yavapai (FEMA Docket No.: B–1165).	Unincorporated areas of Yavapai County (10–09–0220P).	Oct. 8, 2010, Oct. 15, 2010, *The Daily Courier.*	Ms. Carol Springer, Chair, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	February 14, 2011	040093
California:					
Placer (FEMA Docket No.: B–1165).	City of Rocklin (09–09–2897P).	Oct. 7, 2010, Oct. 14, 2010, *The Placer Herald.*	The Honorable George Magnuson, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, CA 95677.	February 11, 2011	060242
San Diego (FEMA Docket No.: B–1165).	Unincorporated areas of San Diego County (10–09–2166P).	Oct. 22, 2010, Oct. 29, 2010, *The San Diego Transcript.*	Mr. Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	November 18, 2010	060284
Colorado:					
El Paso (FEMA Docket No.: B–1172).	City of Colorado Springs (10–08–0460P).	Oct. 27, 2010, Nov. 3, 2010, *The El Paso County Advertiser and News.*	The Honorable Lionel Riviera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80903.	November 17, 2010	080060

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Summit (FEMA Docket No.: B–1172).	Unincorporated areas of Summit County (10–08–0470P).	Nov. 5, 2010, Nov. 12, 2010, *The Summit County Journal*.	Ms. Karn Stiegelmeier, Chair, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, CO 80424.	November 29, 2010	080290
Weld (FEMA Docket No.: B–1172).	Town of Firestone (10–08–0823P).	Oct. 8, 2010, Oct. 15, 2010, *The Greeley Tribune*.	The Honorable Chad Auer, Mayor, Town of Firestone, 151 Grant Avenue, P.O. Box 100, Firestone, CO 80520.	February 14, 2011	080241
Weld (FEMA Docket No.: B–1172).	Town of Frederick (10–08–0823P).	Oct. 8, 2010, Oct. 15, 2010, *The Greeley Tribune*.	The Honorable Eric Doering, Mayor, Town of Frederick, 401 Locust Street, P.O. Box 435, Frederick, CO 80530.	February 14, 2011	080244
Weld (FEMA Docket No.: B–1172).	Unincorporated areas of Weld County (10–08–0823P).	Oct. 8, 2010, Oct. 15, 2010, *The Greeley Tribune*.	Ms. Barbara Kirkmeyer, Chair, Weld County Board of Commissioners, 915 10th Street, P.O. Box 758, Greeley, CO 80632.	February 14, 2011	080266
Florida:					
Collier (FEMA Docket No.: B–1172).	City of Marco Island (10–04–7495P).	Nov. 5, 2010, Nov. 12, 2010, *The Naples Daily News*.	Mr. Frank Recker, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	October 27, 2010	120426
Sarasota (FEMA Docket No.: B–1172).	City of Sarasota (10–04–6569P).	Nov. 5, 2010, Nov. 12, 2010, *The Sarasota Herald-Tribune*.	The Honorable Kelly M. Kirschner, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	October 28, 2010	125150
Georgia:					
Forsyth (FEMA Docket No.: B–1172).	Unincorporated areas of Forsyth County (10–04–6459P).	Oct. 27, 2010, Nov. 3, 2010, *The Forsyth County News*.	Mr. Brian R. Tam, Chairman, Forsyth County Board of Commissioners, 110 East Main Street, Suite 210, Cumming, GA 30040.	November 17. 2010	130312
South Carolina: Dorchester (FEMA Docket No.: B–1165).	Unincorporated areas of Dorchester County (10–04–6791P).	Oct. 8, 2010, Oct. 15, 2010, *The Post and Courier*.	Mr. Larry Hargett, Chairman, Dorchester County Council, 201 Johnston Street, St. George, SC 29477.	February 14, 2011	450068
South Dakota:					
Minnehaha (FEMA Docket No.: B–1165).	City of Hartford (10–08–0469P).	Oct. 8, 2010, Oct. 15, 2010, *The Argus Leader*.	The Honorable Paul Zimmer, Mayor, City of Hartford, 125 North Main Avenue, Hartford, SD 57033.	February 14, 2011	460180
Minnehaha (FEMA Docket No.: B–1165).	Unincorporated areas of Minnehaha County (10–08–0469P).	Oct. 8, 2010, Oct. 15, 2010, *The Argus Leader*.	Mr. John Pekas, Chairman, Minnehaha County Board of Commissioners, 415 North Dakota Avenue, 1st Floor, Sioux Falls, SD 57104.	February 14, 2011	460057
Utah:					
Utah (FEMA Docket No.: B–1172).	City of Spanish Fork (10–08–0282P).	Oct. 8, 2010, Oct. 15, 2010, *The Daily Herald*.	The Honorable G. Wayne Anderson, Mayor, City of Spanish Fork, 40 South Main Street, Spanish Fork, UT 84660.	February 14, 2011	490241
Utah (FEMA Docket No.: B–1172).	Unincorporated areas of Utah County (10–08–0282P).	Oct. 8, 2010, Oct. 15, 2010, *The Daily Herald*.	Mr. Gary J. Anderson, Chairman, Utah County Board of Commissioners, 100 East Center Street, Suite 2300, Provo, UT 84606.	February 14, 2011	495517

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–8841 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1183]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal

Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
McHenry	Unincorporated areas of McHenry County, (10–05–4602P).	Feb. 7, 2011, Feb. 14, 2011, *The Northwest Herald.*	Mr. Ken A. Koehler, Chairman, McHenry County Board, 2200 North Seminary Avenue, Woodstock, IL 60098.	June 14, 2011	170732
Kansas: Johnson	City of Overland Park (10–07–2077P).	Jan. 5, 2011, Jan. 12, 2011, *Sun Publications.*	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	May 12, 2011	200174
Nebraska: Douglas	City of Omaha (10–07–2288P).	Jan. 13, 2011, Jan. 20, 2011, *The Daily Record.*	The Honorable Jim Suttle, Mayor, City of Omaha, Omaha-Douglas Civic Center, 1819 Farnam Street, Suite 300, Omaha, NE 68183.	December 30, 2010	315274
Ohio:					
Butler	City of Monroe (10–05–4421P).	Feb. 3, 2011, Feb. 10, 2011, *The Middletown Journal.*	The Honorable Robert E. Routson, Mayor, City of Monroe, 233 South Main Street, P.O. Box 330, Monroe, OH 45050.	January 24, 2011	390042
Franklin	Unincorporated areas of Franklin County (10–05–2538P).	Jan. 24, 2011, Jan. 31, 2011, *The Daily Reporter.*	Mr. John O'Grady, President, Franklin County, 373 South High Street, 26th Floor, Columbus, OH 43215.	May 31, 2011	390167
Rhode Island: Providence.	City of Cranston (11–01–0960P).	Feb. 3, 2011, Feb. 10, 2011, *The Cranston Herald.*	The Honorable Allan Fung, Mayor, City of Cranston, Cranston City Hall, 869 Park Avenue, Cranston, RI 02910.	January 21, 2011	445396

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–8854 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2008–0125; 92100–1111–0000–B3]

RIN 1018–AW09

Endangered and Threatened Wildlife and Plants; 44 Marine and Anadromous Taxa: Adding 10 Taxa, Delisting 1 Taxon, Reclassifying 1 Taxon, and Updating 32 Taxa on the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending the List of Endangered and Threatened Wildlife (List) by adding 10 marine taxa, delisting 1 marine taxon, reclassifying 1 marine taxon, and revising 32 marine taxa in accordance with the Endangered Species Act of 1973, as amended (Act). These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: This rule is effective April 13, 2011. For applicability date by individual taxon, see table 1 in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Michael Franz, 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine and anadromous taxa specified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. NMFS makes these determinations via its formal rulemaking process. We, the Service, are then responsible for publishing final rules to amend the List in the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

Under section 4(a)(2)(A) of the Act, if NMFS determines that a species should be listed as endangered or threatened, or that a species' status should be changed from threatened to endangered, then NMFS is required to inform the Service of the status change. The Service is then responsible for implementing the status change by publishing a final rule to amend the List 50 CFR 17.11(h). Under section 4(a)(2)(B) of the Act, if NMFS determines that a species should be removed from the List (delisted), or that a species' status should be changed from an endangered to a threatened species, then NMFS is required to recommend the status change to the Service. If the Service concurs with the recommended status change, then the Service will implement the status change by publishing a final rule to amend the List 50 CFR 17.11(h).

As described below and set forth at table 1, NMFS has published rules regarding each of the species mentioned in this rule. Section 4(a)(2)(A) applies to all of the rules except that for the Caribbean monk seal; with respect to those rules, by publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the CFR. Section 4(a)(2)(B) applies to the NMFS's recommendation to delist the Caribbean monk seal; we have concurred with NMFS's recommendation, and this rule implements that action.

Listings

We are adding the following ten species to the List based on NMFS final rules:

- Coho salmon, Lower Columbia River evolutionarily significant unit (ESU), as threatened (70 FR 37160; June 28, 2005);
- Steelhead, Puget Sound distinct population segment (DPS), as threatened (72 FR 26722; May 11, 2007);
- Coho salmon, Oregon Coast ESU, as threatened with critical habitat (73 FR 7816; February 11, 2008);
- Beluga whale, Cook Inlet DPS, as endangered (73 FR 62919; October 22, 2008);
- Black abalone as endangered (74 FR 1937; January 14, 2009);
- Bocaccio, Puget Sound/Georgia Basin DPS, as endangered (75 FR 22276; April 28, 2010);
- Canary rockfish, Puget Sound/Georgia Basin DPS, as threatened (75 FR 22276; April 28, 2010);
- Pacific eulachon, Southern DPS, as threatened (75 FR 13012; March 18, 2010); and
- Yelloweyerockfish, Puget Sound/Georgia Basin DPS, as threatened (75 FR 22276; April 28, 2010);
- Spotted seal, southern DPS, as threatened (75 FR 65239), with a 4(d) rule.

Please note: The Oregon Coast coho salmon ESU was listed on August 10, 1998, as threatened (63 FR 42587), but in 2001, the U.S. District Court in Eugene, Oregon, set aside that listing (*AlseaValleyAlliance* v. *Evans,* 161 F. Supp. 2d 1154, (D. Or. 2001)). On February 11, 2008, NMFS listed the Oregon Coast coho salmon ESU as threatened, issued protective regulations under section 4(d) of the Act (known as a 4(d) rule), and designated critical habitat (73 FR 7816). As a result of another court challenge (*Douglas County* v. *Balsiger* (Civ. No. 08–01547; D. Or. 2008), NMFS reached a settlement with the litigants and agreed to conduct another status review of the ESU. After conducting the additional status review, NMFS proposed to affirm the status for this ESU by promulgating a rule to supersede its February 11, 2008, listing determination (75 FR 29489; May 26, 2010).

Delisting

We are delisting the following species based on a NMFS final rule:

- Caribbean monk seal (73 FR 63901; October 28, 2008).

Reclassification

We are reclassifying the following species based on a NMFS final rule:

- Coho salmon, Central California Coast ESU, from threatened to endangered (70 FR 37160; June 28, 2005).

Revisions

We are updating 32 entries on the List based on NMFS final rules and to make these entries easier for the public to identify as follows:

- "Common Name" (adding ESU subtitles) and "Vertebrate population where endangered or threatened" updates for 14 salmon ESUs—Chinook (California coastal, Central Valley spring-run, Lower Columbia River, Puget Sound, Sacramento River winter-run, Snake River fall-run, Snake River spring/summer, Upper Columbia River spring-run (as discussed below), and Upper Willamette), chum (Columbia River, Hood Canal summer-run), coho (Central California Coast, Southern Oregon–Northern California Coast), and sockeye (Ozette Lake, Snake River)(70 FR 37160; June 28, 2005).
- Common Name" (adding DPS subtitles) and "Vertebrate population where endangered or threatened" updates for 10 steelhead DPSs—

California Central Valley, Central California Coast, Lower Columbia River, Middle Columbia River, Northern California, Snake River Basin, South–Central California Coast, Southern California, Upper Columbia River, and Upper Willamette River (71 FR 833; January 5, 2006).

• A status correction from threatened to endangered for the Upper Columbia River spring-run Chinook ESU (64 FR 14308, March 24, 1999; and 70 FR 37160, June 28, 2005) (This is the second change described to the entry for this species; the first is listed above with the updates to the 14 salmon ESUs.).

• A new common name (Salmon, Atlantic, Gulf of Maine DPS) for the endangered *Salmosalar,* which is jointly listed as a DPS by NMFS and the Service, to make it clearer to the public and a critical habitat entry (74 FR 29344, June 19, 2009; and 74 FR 29300, June 19, 2009).

• A right whale taxonomic revision of March 6, 2008 (73 FR 12024), which is consistent with the technical revision of 68 FR 17560 (April 10, 2003). We formally accept the technical revisions of 68 FR 17560 as of this publication and revise the North Pacific right whale to add the critical habitat entry of April 8, 2008 (73 FR 19000).

• A critical habitat entry for the Southern Resident DPS of killer whale (71 FR 69054; November 29, 2006), United States DPS of the smalltooth sawfish (74 FR 45353; September 2, 2009), elkhorn coral and staghorn coral (74 FR 72209; November 26, 2008), and Southern DPS of the North American green sturgeon (74 FR 52299; October 9, 2009).

• A 4(d) rule entry for Puget Sound steelhead (73 FR 55451; September 25, 2008), elkhorn and staghorn corals (73 FR 64264; October 29, 2008), and the Southern DPS of green sturgeon (75 FR 30714; June 2, 2010).

The previous NMFS **Federal Register** publications to propose and finalize listings for these species are in table 1. In all cases, within the published final rule, NMFS addressed the public comments received.

TABLE 1—RULEMAKING ACTIONS BY THE NATIONAL MARINE FISHERIES SERVICE TO ADD MARINE AND ANADROMOUS SPECIES TO THE LIST OF ENDANGERED AND THREATENED WILDLIFE

Common name	Scientific name	Proposed rule publication date, action	Final rule publication date, change in action (If any)	Effective date
Lower Columbia River evolutionarily significant unit (ESU) of coho salmon.	*Oncorhynchuskisutch*	June 14, 2004 (69 FR 33102), to list as threatened.	June 28, 2005 (70 FR 37160).	August 29, 2005.
16 ESUs of West Coast salmon.	*Oncorhynchustshawytscha, Oncorhynchuskisutch, Oncorhynchusnerka, Oncorhyn-chusketa.*	June 14, 2004 (69 FR 33102), proposed rule on 27 DPSs of salmon, including reclassifying the Central California Coast ESU of coho salmon (*Oncorhynchuskisutch*) from threatened to endangered.	June 28, 2005 (70 FR 37160), final rule for listing determinations of 16 ESUs of West Coast salmon.	August 29, 2005.
10 DPSs of West Coast steelhead.	*Oncorhynchusmykiss*	June 14, 2004 (69 FR 33102), proposed rule on 10 DPSs of steelhead, including reclassifying the Upper Columbia River DPS from endangered to threatened.	January 5, 2006 (71 FR 833), final rule for listing determinations for 10 DPSs of West Coast steelhead.	February 6, 2006.
Killer whale	*Orcinus orca*	June 15, 2006 (71 FR 34571), to designate critical habitat.	November 29, 2006 (71 FR 69054).	December 29, 2006.
Puget Sound distinct population segment (DPS) of steelhead.	*Oncorhynchusmykiss*	March 29, 2006 (71 FR 15666), to list as threatened.	May 11, 2007 (72 FR 26722).	June 11, 2007.
		May 11, 2007 (72 FR 26722), to issue protective regulations (a 4(d) rule).	September 25, 2008 (73 FR 55451).	October 27, 2008.
North Atlantic right, North Pacific right, and Southern right whale.	*Eubalaenaglacialis, Eubalaena japonica, Eubalaenaaustralis.*	December 27, 2006 (71 FR 77694), taxonomic revision.	March 6, 2008 (73 FR 12024).	April 7, 2008.
North Pacific right whale	*Eubalaena japonica*	October 29, 2007 (72 FR 61089), to designate critical habitat.	April 8, 2008 (73 FR 19000).	May 8, 2008.
Oregon Coast ESU of coho salmon.	*Oncorhynchuskisutch*	June 14, 2004 (69 FR 33102), to list as threatened.	February 11, 2008 (73 FR 7816).	May 12, 2008.
Caribbean monk seal	*Monachustropicalis*	June 9, 2008 (73 FR 32521), to delist.	October 28, 2008 (73 FR 63901).	October 28, 2008.
Cook Inlet DPS of beluga whale.	*Delphinapterusleucas*	April 20, 2007 (72 FR 19854), to list as endangered.	October 22, 2008 (73 FR 62919).	December 22, 2008.

TABLE 1—RULEMAKING ACTIONS BY THE NATIONAL MARINE FISHERIES SERVICE TO ADD MARINE AND ANADROMOUS SPECIES TO THE LIST OF ENDANGERED AND THREATENED WILDLIFE—Continued

Common name	Scientific name	Proposed rule publication date, action	Final rule publication date, change in action (If any)	Effective date
Elkhorn and staghorn corals.	*Acroporapalmata, Acroporacervicornis.*	December 14, 2007 (72 FR 71102), to issue protective regulations (a 4(d) rule).	October 29, 2008 (73 FR 64264).	November 28, 2008.
		February 6, 2008 (73 FR 6895), to designate critical habitat.	November 26, 2008 (73 FR 72210).	December 26, 2008.
Black abalone	*Haliotiscracherodii*	January 11, 2008 (73 FR 1986), to list as endangered.	January 14, 2009 (74 FR 1937).	February 13, 2009.
Atlantic salmon (Gulf of Maine DPS).	*Salmosalar*	September 3, 2008 (73 FR 51415), to list a distinct population segment (DPS) as endangered.	DPS—June 19, 2009 (74 FR 29344).	July 20, 2009.
		September 5, 2008 (73 FR 51747), to designate critical habitat.	Critical habitat—June 19, 2009 (74 FR 29300).	July 20, 2009.
Smalltooth sawfish (United States DPS).	*Pristispectinata*	November 20, 2008 (73 FR 70290), to designate critical habitat.	September 2, 2009 (74 FR 45353).	October 2, 2009.
North American green sturgeon (Southern DPS).	*Acipensermedirostris*	September 8, 2008 (73 FR 52084), to designate critical habitat.	October 9, 2009 (74 FR 52300).	November 9, 2009.
		May 21, 2009 (74 FR 23822), to issue protective regulations (a 4(d) rule).	June 2, 2010 (75 FR 30714).	July 2, 2010.
Eulachon, Pacific (Southern DPS).	*Thaleichthyspacificus*	March 13, 2009 (74 FR 10857) to list as threatened.	March 18, 2010 (75 FR 13012).	May 17, 2010.
Yelloweye rockfish, canary rockfish, bocaccio (Puget Sound/Georgia Basin DPS),	*Sebastesruberrimus Sebastespinniger Sebastespaucispinis.*	April 23, 2009 (74 FR 18516), to list as endangered or threatened.	April 28, 2010 (75 FR 22276).	July 27, 2010.
Spotted seal (southern DPS).	*Phocalargha*	October 20, 2009 (74 FR 53685), to list as threatened, with 4(d) rule.	October 25, 2010 (75 FR 65239).	November 22, 2010.

Administrative Procedure Act

Because NMFS provided a public comment period on each of the proposed rules for these taxa, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication. The NMFS rules extended protection under the Act to these species and listed them in 50 CFR parts 223 and 224 or designated critical habitat under 50 CFR part 226; this rule is an administrative action to add the species to or update their status on the List in 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We outlined our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by:

■ a. Removing the entry under MAMMALS for "Seal, Caribbean monk";

■ b. Revising the entries under MAMMALS for "Whale, killer" and "Whale, North Pacific right"; under FISHES for

- "Salmon, Atlantic (Gulf of Maine DPS)",
- "Salmon, Chinook (California Coastal ESU)",

• "Salmon, Chinook (Central Valley spring-run ESU)",
• "Salmon, Chinook (Lower Columbia River ESU)",
• "Salmon, Chinook (Puget Sound ESU)",
• "Salmon, Chinook (Sacramento River winter-run ESU)",
• "Salmon, Chinook (Snake River fall-run ESU)",
• "Salmon, Chinook (Snake River spring/summer-run ESU)",
• "Salmon, Chinook (Upper Columbia spring-run ESU)",
• "Salmon Chinook (Upper Willamette River ESU)",
• "Salmon, chum (Columbia River ESU)",
• "Salmon, chum (Hood Canal summer-run ESU)",
• "Salmon, coho (Central California Coast ESU)",
• "Salmon, coho (Southern Oregon–northern California Coast ESU)",
• "Salmon, sockeye (Ozette Lake ESU)",
• "Salmon, sockeye (Snake River ESU)",
• "Sawfish, smalltooth (United States DPS)",
• "Steelhead (California Central Valley DPS)",
• "Steelhead (Central California Coast DPS)",
• "Steelhead (Lower Columbia River DPS)",
• "Steelhead (Middle Columbia River DPS)",
• "Steelhead (Northern California DPS)",
• "Steelhead (Snake River Basin DPS)",
• "Steelhead (South Central California Coast DPS)",
• "Steelhead (Southern California DPS)",
• "Steelhead (Upper Columbia River DPS)",
• "Steelhead (Upper Willamette River DPS)", and
• "Sturgeon, North American green (Southern DPS); and under CORALS for "Coral, elkhorn" and "Coral, staghorn"; and

■ c. Adding entries in alphabetic order under MAMMALS for "Seal, spotted (Southern DPS)", "Whale, beluga (Cook Inlet DPS)"; under FISHES for
• "Bocaccio (Puget Sound/Georgia Basin DPS)",
• "Eulachon, Pacific (Southern DPS)",
• "Rockfish, canary (Puget Sound/Georgia Basin DPS)",
• "Rockfish, yelloweye (Puget Sound/Georgia Basin DPS)",
• "Salmon, coho (Lower Columbia River ESU)",
• "Salmon, coho (Oregon Coast ESU)", and
• "Steelhead (Puget Sound DPS)";

and under SNAILSfor "Abalone, black" to read as set forth below:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Seal, spotted (southern DPS).	*Phocalargha*	Pacific Ocean; Sea of Japan and northern Yellow Sea.	Southern DPS—all breeding populations of spotted seals south of 43 degrees north latitude in the Pacific Ocean.	T	776	NA	223.211
Whale, beluga (Cook Inlet DPS).	*Delphinapterusleucas*	Oceanic; Cook Inlet, northern Gulf of Alaska.	Cook Inlet DPS—Cook Inlet, Alaska	E	776	NA	NA
*	*	*	*	*	*	*	
Whale, killer (Southern Resident DPS).	*Orcinus orca*	Pacific Ocean	Southern Resident DPS, which consists of whales from the J, K, and L pods, wherever they are found in the wild.	E	756	226.206	NA
*	*	*	*	*	*	*	
Whale, North Pacific right.	*Eubalaena japonica*	Oceanic	Entire	E	3	226.215	NA
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Bocaccio (Puget Sound–Georgia Basin DPS).	*Sebastespaucispinis*	Pacific coast from Punta Blanca, Baja California, to the Gulf of Alaska off Krozoff and Kodiak Islands.	Puget Sound–Georgia Basin DPS—U.S.A. (WA) and British Columbia, including Puget Sound and Georgia Basin.	E	776	NA	NA
*	*	*	*	*	*	*	
Eulachon, Pacific (Southern DPS).	*Thaleichthyspacificus*	Eastern Pacific Ocean, from northern California to southwestern Alaska and into the southeastern Bering Sea.	Southern DPS—Populations spawning from the Skeena River in British Columbia (inclusive) south to the Mad River in Northern California (inclusive), wherever found.	T	776	NA	NA
*	*	*	*	*	*	*	
Rockfish, canary (Puget Sound–Georgia Basin DPS).	*Sebastespinniger*	Pacific coast from Punta Colnett, Baja California, to the Western Gulf of Alaska.	Puget Sound–Georgia Basin DPS—U.S.A. (WA) and British Columbia, including Puget Sound and Georgia Basin.	T	776	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Rockfish, yelloweye (Puget Sound–Georgia Basin DPS).	*Sebastesruberrimus*	Pacific coast from northern Baja California to the Aleutian Islands, Alaska.	Puget Sound–Georgia Basin DPS—U.S.A. (WA) and British Columbia, including Puget Sound and Georgia Basin.	T	776	NA	NA
Salmon, Atlantic (Gulf of Maine DPS).	*Salmosalar*	U.S.A., Canada, Greenland, western Europe.	Gulf of Maine DPS—U.S.A. (ME), which includes all naturally reproducing populations and those river-specific hatchery populations cultured from them.	E	705	226.217	NA
Salmon, Chinook (California Coastal ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	California Coastal ESU—U.S.A. (CA), including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: See 223.102.	T	674	226.211	NA
Salmon, Chinook (Central Valley spring-run ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Central Valley spring-run ESU—U.S.A. (CA), including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.	T	674	226.211	NA
Salmon, Chinook (Lower Columbia River ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Lower Columbia River ESU—U.S.A. (OR, WA), including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as 17 artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, Chinook (Puget Sound ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Puget Sound ESU—U.S.A. (WA), including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as 26 artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, Chinook (Sacramento River winter-run ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Sacramento River winter-run ESU—U.S.A. (CA), including all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: See 224.101(a).	E	383E, 407, 534	226.204	NA
Salmon, Chinook (Snake River fall ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Snake River fall-run ESU—U.S.A. (ID, OR, WA), including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: See 223.102.	T	516, 557E	226.205	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, Chinook (Snake River spring/summer-run ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Snake River spring/summer-run ESU—U.S.A. (ID, OR, WA), including all naturally spawned populations of spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as 15 artificial propagation programs: See 223.102.	T	516, 557E	226.205	NA
Salmon, Chinook (Upper Columbia spring-run ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Upper Columbia spring-run ESU—U.S.A. (WA), including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: See 224.101(a).	E	664	226.212	NA
Salmon, Chinook (Upper Willamette River ESU).	*Oncorhynchustshawytscha*	North America from Ventura River in California to Point Hope, Alaska, and the Mackenzie River area in Canada; northeast Asia from Hokkaido, Japan, to the Anadyr River, Russia.	Upper Willamette River ESU—U.S.A. (OR), including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, chum (Columbia River ESU).	*Oncorhynchusketa*	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California; Arctic Ocean from the Laptev Sea in Russia to Mackenzie River in Canada.	Columbia River ESU—U.S.A. (OR, WA), including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, chum (Hood Canal summer-run ESU).	*Oncorhynchusketa*	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California; Arctic Ocean from the Laptev Sea in Russia to Mackenzie River in Canada.	Hood Canal summer-run ESU—U.S.A. (WA), including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, coho (Central California Coast ESU).	*Oncorhynchuskisutch*	North Pacific Basin from U.S.A. (CA to AK) to Russia and Japan.	Central California Coast ESU—U.S.A. (CA), including all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento–San Joaquin River system, as well as four artificial propagation programs: See 224.101(a).	E	598	226.210	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, coho (Lower Columbia River ESU).	*Oncorhynchuskisutch*	North Pacific Basin from U.S.A. (CA to AK) to Russia and Japan.	Lower Columbia River ESU—U.S.A. (OR, WA), including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as 25 artificial propagation programs: See 223.102.	T	776	NA	NA
Salmon, coho (Oregon Coast ESU).	*Oncorhynchuskisutch*	North Pacific Basin from U.S.A. (CA to AK) to Russia and Japan.	Oregon Coast ESU—U.S.A. (OR), all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including the Cow Creek (Oregon Department of Fish and Wildlife stock #37) coho hatchery program.	T	776	226.212	223.203
Salmon, coho (Southern Oregon–Northern California Coast ESU).	*Oncorhynchuskisutch*	North Pacific Basin from U.S.A. (CA to AK) to Russia and Japan.	Southern Oregon–Northern California Coast ESU—U.S.A. (CA, OR), including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well as three artificial propagation programs: See 223.102.	T	618	226.210	NA
Salmon, sockeye (Ozette Lake ESU).	*Oncorhynchusnerka*	North Pacific Basin from U.S.A. (CA) to Russia.	Ozette Lake ESU—U.S.A. (WA), including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: See 223.102.	T	664	226.212	223.203
Salmon, sockeye (Snake River ESU).	*Oncorhynchusnerka*	North Pacific Basin from U.S.A. (CA) to Russia.	Snake River ESU—U.S.A. (ID), including all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, as well as artificially propagated sockeye salmon from the Redfish Lake captive propagation program.	E	455	226.205	NA
Sawfish, smalltooth (United States DPS).	*Pristispectinata*	North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic.	United States, DPS, Gulf of Mexico from Texas to Florida and along the east coast from Florida to Cape Hatteras.	E	748	226.218	NA
*	*	*	*	*	*	*	
Steelhead (California Central Valley DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	California Central Valley DPS—U.S.A. (CA), including all naturally spawned anadromous O. mykisssteelhead populations below natural and manmade impassable barriers in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries. It also includes steelhead from the Coleman National Fish Hatchery and Feather River Hatchery programs.	T	638	226.211	223.203

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Steelhead (Central California Coast DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Central California Coast DPS—U.S.A. (CA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in California streams from the Russian River (inclusive) to Aptos Creek (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin Rivers. Tributary streams to Suisun Marsh including Suisun Creek, Green Valley Creek, and anunnamed tributary to Cordelia Slough (commonly referred to as Red Top Creek), excluding the Sacramento-San Joaquin River Basin, It also includes steelhead from the Don Clausen Fish Hatchery and Kingfisher Flat Hatchery—Scott Creek (Monterey Bay Salmon and Trout Project) programs.	T	638	226.211	223.203
Steelhead (Lower Columbia River DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Lower Columbia River DPS—U.S.A. (OR, WA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. It also includes steelhead from 10 artificial propagation programs: See 223.102.	T	638	226.212	223.203
Steelhead (Middle Columbia River DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Middle Columbia River DPS—U.S.A. (OR, WA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington, excluding O. mykiss from the Snake River Basin. It also includes steelhead from seven artificial propagation programs: See 223.102.	T	664	226.212	223.203
Steelhead (Northern California DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Northern California DPS—U.S.A. (CA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in California coastal river basins from Redwood Creek southward to, but not including, the Russian River. It also includes steelhead from the Yager Creek Hatchery, and North Fork Gualala River Hatchery (Gualala River Steelhead Project) hatchery programs.	T	701	226.211	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Steelhead (Puget Sound DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Puget Sound DPS—U.S.A. (WA), including all naturally spawned anadromous O. mykiss (steelhead) populations, from streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and HammaHamma winter-run steelhead hatchery stocks.	T	776	NA	223.203
Steelhead (Snake River Basin DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Snake River Basin DPS—U.S.A. (ID, OR, WA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho. It also includes steelhead from six artificial propagation programs: See 223.102.	T	638	226.212	223.203
Steelhead (South Central California Coast DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	South Central California Coast DPS—U.S.A. (CA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams from the Pajaro River (inclusive), to (but not including) the Santa Maria River, California.	T	638	226.211	223.203
Steelhead (Southern California DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Southern California DPS—U.S.A. (CA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams from the Santa Maria River, San Luis Obispo County, California, (inclusive) to the U.S.–Mexico border.	E	638	226.211	NA
Steelhead (Upper Columbia River DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Upper Columbia River DPS—U.S.A. (WA), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.–Canada border, as well as six artificial propagation programs: See 223.102.	T	638	226.212	NA
Steelhead (Upper Willamette River DPS).	*Oncorhynchusmykiss*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	Upper Willamette River DPS—U.S.A. (OR), including all naturally spawned anadromous O. mykiss (steelhead) populations below natural and manmade impassable barriers in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.	T	664	226.212	223.203
*	*	*	*	*	*	*	
Sturgeon, North American green (Southern DPS).	*Acipensermedirostris*	U.S.A. (CA)	Southern DPS—U.S.A. (CA), which includes all spawning populations south of the Eel River (exclusive), principally including the Sacramento River spawning population.	T	756	226.219	223.210
*	*	*	*	*	*	*	

SNAILS

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	* *	*		*	
Abalone, Black	*Haliotiscracherodii*	North America (West coast from Crescent City, CA, USA, to Cape San Lucas, Baja California, Mexico.	NA	E	776	NA	NA
*	*	*	* *	*		*	
CORALS							
*	*	*	* *	*		*	
Coral, elkhorn	*Acroporapalmata*	U.S.A. (FL, PR, VI, Navassa); and wider Caribbean—Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela, and all the islands of the West Indies.	NA	T	756	226.216	223.208
Coral, staghorn	*Acroporacervicornis*	U.S.A. (FL, PR, VI, Navassa); and wider Caribbean—Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela, and all the islands of the West Indies.	NA	T	756	226.216	223.208

Dated: February 10, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–8822 Filed 4–12–11; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 76, No. 71
Wednesday, April 13, 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 HEALTH AND HUMAN SERVICES

2 CFR Chapters III and XXX

5 CFR Chapter XLV

21 CFR Chapter I

25 CFR Chapter V

42 CFR Chapters I, IV and V

45 CFR Subtitle A and Chapters II, III, IV, X, XIII

48 CFR Chapter 3

HHS Plan for Retrospective Review Under Executive Order 13563

AGENCY: Department of Health and Human Services.

ACTION: Notice; request for information.

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Department of Health and Human Services (HHS) seeks comment from interested parties to assist in the development of its preliminary plan to review existing regulations. The purpose of the plan is to establish a process by which HHS can determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make HHS's regulatory program more effective or less burdensome in achieving its regulatory objectives.

DATES: Submit electronic or written comments on this notice by May 12, 2011.

Instructions: All submissions received must include the Agency name HHS–ES–2011–001 for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.

ADDRESSES: You may submit comments, identified by HHS–ES–2011–001 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. HHS will post all comments received before the close of the comment period as soon as possible after they have been received:

Written Submissions

Submit written submissions in the following ways:

FAX: (202) 690–7203.

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): 200 Independence Avenue, SW., Room 639G, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Oliver Potts at (202) 690–6392.

SUPPLEMENTARY INFORMATION:

On January 18, 2011, President Obama issued Executive Order 13563 to improve regulation and regulatory review by requiring Federal agencies to design cost effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness, and which rely on the best, most innovative, and least burdensome tools to achieve regulatory ends. To meet that objective, the President directs each Executive Branch agency to consider how best to promote periodic retrospective review of existing significant rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. Each agency is to develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan under which the agency will periodically review existing rules to determine whether any such regulations should be modified, streamlined, expanded, or repealed.

Background

HHS is the Federal Government's principal agency charged with protecting the health of all Americans and providing essential human services. HHS' responsibilities include: Medicare, Medicaid, increasing access to care and insurance coverage, support for public health preparedness and emergency response, biomedical research, substance abuse and mental health treatment and prevention, assurance of safe and effective drugs and other medical products, protection of our Nation's food supply, assistance to low income families, the Head Start program, services to older Americans, and direct health services delivery. HHS is comprised of 18 staff divisions and 12 operating divisions, many of which have responsibility for promulgating regulations pursuant to HHS's statutory authority. Although many components of HHS, currently conduct periodic retrospective reviews, until now there has been no single HHS-wide plan for ongoing review of HHS regulations.

HHS's goal is to establish a robust and resilient framework for each HHS agency to undertake a periodic thoughtful analysis of its significant existing regulations, resulting in a more streamlined, flexible, less burdensome regulatory structure. HHS seeks comments from the public on various aspects of the framework that might be considered as HHS develops its plan.

Request for Information

HHS has determined that the plan called for by the President should reflect HHS's overall approach to regulatory review, leaving implementation of that plan to each individual regulatory agency. Accordingly, HHS solicits comments on the following elements to be included in its preliminary plan:

- Schedule for Ongoing Review—The public is first asked to comment on how HHS should determine a schedule for review. Understanding that an effective review process can be time consuming, comments might address how best to schedule periodic reviews that will be meaningful, yet not unduly burden individual agencies within HHS, or how best to integrate mandatory reviews of HHS regulations—for example, reviews of regulations at least every ten years that have a significant economic impact on a substantial number of small businesses as required by the Regulatory Flexibility Act; annual reviews of hospital, physician, nursing facility, dialysis facility, and other provider payment rules setting reimbursement rates under Medicare for each fiscal year; or reviews every five years of regulations establishing relative value units for health care provider activities for Medicare reimbursement purposes—with the retrospective reviews called for under the new Executive Order.
- Process for Setting Priorities—HHS solicits comments about factors it should consider and the process it should use in setting priorities and

selecting rules for review. For example, should the amount of time a regulation is in effect be criteria for review? If so, how much time should that be? Should HHS involve outside experts in setting its review priorities? What metrics should HHS use to evaluate regulations after they have been implemented? For example, should review be limited to rules based on their projected or actual impact?

• Public Participation—HHS solicits comments on ways to further engage and increase public comment in its rulemaking. Comments might suggest ways to improve HHS' continuing efforts to use online technologies to facilitate greater participation in the rulemaking process, particularly social media and regulations.gov. Comments might also suggest ways to increase open exchanges of information by interested parties, or ways to allow interested parties the opportunity to react to (and benefit from) the comments, arguments, and information of others during the rulemaking process. HHS also welcomes comments on how it can remain informed on new technologies, events or processes that may render significant rules potentially obsolete, outdated, or require modification.

• Analysis of Costs and Benefits—HHS invites public comment on how it ought to develop its analysis of costs and benefits of those rules under consideration for retrospective review. The metrics used to assess costs and benefits at the time a rule is promulgated are likely to be different from those available or necessary to assess costs and benefits of a rule in its present form. Comments might usefully address data sources that will help assess the cost benefit analysis of a regulation after the initial projection has been made or whether there are existing sources of data that HHS should use to evaluate the post-promulgation effects of regulations over time. Additionally, HHS is interested in comments on ways to quantify values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

• Coordination with Other Departments—HHS is interested in public comment on ways that HHS can consider the combined effects of regulations (together with those of other agencies) on particular sectors and industries, particularly small businesses, and State, local and tribal governments; and ways to promote greater coordination across agencies, harmonization of regulatory requirements, and the identification of regulations that are redundant, inconsistent or overlapping.

• General Comments on What HHS Should Include in Its Plan—HHS seeks comment on how best to structure its framework for conducting ongoing retrospective reviews, and other criteria that should be considered in preparation of its preliminary plan.

HHS notes that this RFI is issued solely for information and program-planning purposes. HHS will not respond to individual comments, but will consider them as it formulates its preliminary plan. While responses to this RFI do not bind HHS to any further actions related to the response, all submissions will be made publicly available on *http://www.regulations.gov*.

Dated: April 7, 2011.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2011–8780 Filed 4–12–11; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0006]

Horse Protection Act; Petition for Amendments to Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are notifying the public that the Animal and Plant Health Inspection Service has received a petition requesting changes to our horse protection regulations and our current enforcement practices and related policies regarding those regulations. We are making this petition available to the public for review and comment. We are noting, however, that certain requests in the petition lack authority in the Horse Protection Act to implement.

DATES: We will consider all comments that we receive on or before June 13, 2011.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0006* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0006.

Reading Room: You may read any comments that we receive on the petition in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Rachel Cezar, Horse Protection Program National Coordinator, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737–1238; (301) 734–5784.

SUPPLEMENTARY INFORMATION:

Background

The Horse Protection Act (HPA, 15 U.S.C. 1821–1831) authorizes the Secretary of Agriculture to promulgate regulations prohibiting the showing, exhibition, transport, or sale of horses subjected to soring, a practice of accentuating a horses' gait through the infliction of pain. The Secretary of Agriculture has delegated the responsibility for enforcing the HPA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Exercising its rulemaking authority under the Act, APHIS enforces regulations that are contained in 9 CFR part 11, referred to below as the regulations, that prohibit, among other things, devices and methods that might sore horses.

In a petition sent on August 4, 2010, The Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals, the American Horse Protection Association, Inc., Friends of Sound Horses, Inc., and former Senator Joseph D. Tydings (referred to below as the petitioners) requested that APHIS change its regulations and policies regarding the protection of horses from the practice of soring. The petitioners' requests included permanently disqualifying horses that have been scarred from soring from competitions, permanently disqualifying repeat violators of the HPA, requiring horse industry

organizations to impose minimum penalties for violations, and decertifying noncompliant horse industry organizations.

The HPA does not provide APHIS with the authority to implement certain requests in the petition. Specifically, APHIS does not have the authority under the HPA to permanently disqualify horses that have been scarred from soring from competitions, nor does APHIS have the authority to permanently disqualify repeat violators of the HPA. The disqualification provisions and penalty provisions are clearly enumerated in the HPA.

You may review the petition and submit comments through the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). We welcome all comments on the issues outlined in the petition. We are particularly interested in receiving comments regarding those areas where APHIS has existing authority under the HPA. We encourage the submission of scientific data, studies, or research to support your comments and position, including scientific data or research that supports any industry or professional standards that pertain to horse care. We also invite data on the costs and benefits associated with any recommendations. We will consider all comments and recommendations we receive.

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 7th day of April 2011.

Gregory L. Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–8773 Filed 4–12–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA- 2010–0247; Notice No. 11–01]

RIN 2120–AJ70

Safety Enhancements, Certification of Airports; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); Reopening of comment period.

SUMMARY: The FAA published a proposed rule on February 1, 2011, to establish minimum standards for training of personnel who access the airport non-movement area (ramp and apron) to help prevent accidents and incidents in that area. This proposal would require a certificate holder to conduct pavement surface evaluations to ensure reliability of runway surfaces in wet weather conditions. This proposed action would also require a Surface Movement Guidance Control System (SMGCS) plan if the certificate holder conducts low visibility operations, facilitating the safe movement of aircraft and vehicles in low visibility conditions. Finally, this proposal would clarify the applicability of part 139 and explicitly prohibit fraudulent or intentionally false statements in a certificate application or record required to be maintained. This action reopens the comment period.

DATES: The comment period for the NPRM published on February 1, 2011, (76 FR 5510) closed on April 4, 2011, and is reopened until May 13, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0247 using any of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail*: Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier*: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax*: Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Kenneth Langert, AAS–300, Office of Airports, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–4529; e-mail *kenneth.langert@faa.gov.*

SUPPLEMENTARY INFORMATION: See the "Additional Information" section for information on how to comment on this proposal and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On February 1, 2011, the FAA issued Notice No. 11–01, entitled "Safety Enhancements Part 139, Certification of Airports" [76 FR 5510]. Comments to that document were to be received on or before April 4, 2011.

Historically, the FAA's Flight Standards Service (AFS) has approved airlines (via Operations Specifications) to depart at visibilities less than runway visual range (RVR) 1200 feet even in cases where the instrument approach procedures are published at landing visibilities above RVR 1200. These departure operations are routinely available where runway centerline lights and RVR equipment are installed.

Recently, the FAA Office of Airports (ARP) learned that a number of airport operators may not be aware that low-visibility approaches and departures have been approved for their airport. Advisory Circular AC 120–57A, Surface Movement Guidance and Control System (SMGCS) Plans, includes recommendations that airports should follow in low-visibility take-off operations or develop their own similar procedures. The proposed rule would require a SMGCS plan, similar to that described in AC–120–57A, for each certificate holder where departures below RVR 1200 are authorized, as well as where approach minima less than RVR 1200 are published.

The FAA would like to ensure all airports and industry associations are fully aware of both AC 120–57A and the proposed rule. For this reason, and in the interest of transparency, the FAA will notify, by letter, airports with

approved low-visibility departures. The reopening of the comment period will allow time for affected airports to receive notice from the FAA, review this NPRM, and adequately assess, prepare, and submit comments on the possible impact of this NPRM.

Reopening of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has determined that re-opening of the comment period is consistent with the public interest, and that good cause exists for taking this action. To accomplish the strategies for providing additional information to the public, the FAA has determined that re-opening the comment period is consistent with the public interest, and that good cause exists for this action. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Accordingly, the comment period for Notice No. 11–01 is reopened until May 13, 2011.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD–ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on April 7, 2011.

James R. White,

Deputy Director of Airport Safety and Standards.

[FR Doc. 2011–8838 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM11–15–000]

Bidding by Affiliates in Open Seasons for Pipeline Capacity

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking, DOE.

SUMMARY: The Federal Energy Regulatory Commission is proposing revisions to its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission is also proposing that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

DATES: Comments are due May 31, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at (202) 502–6652 or toll-free at 1–866–208–3676.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process,

see the Comment Procedures section of this document.

FOR FURTHER INFORMATION CONTACT:

Jennifer Kunz, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *Jennifer.Kunz@ferc.gov.* (202) 502–6102.

Robert McLean, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *Robert.McLean@ferc.gov.* (202) 502–8156.

Notice of Proposed Rulemaking

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(April 7, 2011)

1. In this Notice of Proposed Rulemaking, the Commission proposes to revise its Part 284 regulations to prohibit multiple affiliate bidding in open seasons for interstate natural gas pipeline capacity and the subsequent release of acquired capacity to affiliates under certain circumstances. Specifically, the Commission proposes to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission also proposes that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. These proposals would prevent anticompetitive gaming of the *pro rata* allocation methodology by using multiple affiliates of the same entity to acquire a larger share of the available capacity than one affiliate would be able to acquire by itself.

I. Background

A. Open Seasons for Pipeline Capacity

2. The Commission's policy under the Natural Gas Act (NGA) [1] is to allocate available interstate pipeline capacity to the shipper that values it the most, up to the maximum rate.[2] In furtherance of this goal, the Commission favors the use of open seasons to allocate capacity and permits but does not require a net present value (NPV) evaluation as a tool for determining the highest valued use.[3]

3. Some pipelines hold open seasons to alert shippers to the availability of capacity on the pipeline and allow the shippers to bid for available capacity. The pipeline's open season process is an open and transparent procedure that is set forth in the pipeline's tariff. The pipeline notifies shippers of the availability of capacity by posting an open season notice on its EBB and/or Web site for the available capacity. During the open season, the Commission requires pipelines to sell all available capacity to shippers willing to pay the pipeline's maximum recourse rate.[4]

4. NPV is a method for awarding capacity from the bids received during the open season.[5] NPV is a standard method of evaluating bids for capacity by using the time value of money to determine the present value of a time series of discounted cash flows.[6] The highest bidder, based on the NPV of the bid, receives the capacity. Factors determining NPV are price, volume of gas, and duration of the contract. The Commission has stated that a "net present value evaluation * * * allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy." [7]

5. In the event that there is not sufficient capacity to meet all equal maximum bids, pipelines apply a tiebreaker mechanism. One such mechanism is the *pro rata* allocation methodology. Under a *pro rata* allocation tiebreaker mechanism, in the event that there is not sufficient capacity to meet all qualifying bids, the capacity is allocated *pro rata,* i.e., based on the ratio of each shipper's respective nomination to all qualifying nominations, applied to the total available capacity.[8]

B. Multiple Affiliate Bidding

6. It has come to the attention of the Commission that some entities have developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could have acquired by itself. Under conditions where the available capacity is limited and the value of the

[1] 15 U.S.C. 717 *et al.* (2006).

[2] *N. Natural Gas Co.,* 108 FERC ¶ 61,044, at P 11 (2004); *Texican N. La. Transport, LLC* v. *Southern Natural Gas Co.,* 129 FERC ¶ 61,270, at P 70 (2009) (Texican I), *order on reh'g,* 132 FERC ¶ 61,167, at P 23, 26 (2010) (*Texican II*).

[3] *Texican II,* 132 FERC ¶ 61,167 at P 26.

[4] *Promotion of a More Efficient Capacity Release Market,* 72 FR 65916 (November 26, 2007), FERC Stats. & Regs. ¶ 32,625, at P 40 (2007), (citing *Tenn. Gas Pipeline Co.,* 91 FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom., Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002)).

[5] NPV is not the only method a pipeline could use. Another is the "first come-first served" approach, where the first shipper to submit a qualifying bid receives the capacity.

[6] *Saltville Gas Storage Co., L.L.C.,* 128 FERC ¶ 61,257, at P 2 n.3 (2009).

[7] *Tenn. Gas Pipeline Co.,* 76 FERC ¶ 61,101, at 61,522 (1996), *order on reh'g,* 79 FERC ¶ 61,297 (1997), *order on reh'g,* 82 FERC ¶ 61,008 (1998), *remanded sub nom. Process Gas Consumers Group* v. *FERC,* 177 F.3d 995 (DC Cir. 1999), *order on compliance,* 91 FERC ¶ 61,333 (2000), *order on remand,* 91 FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom. Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002).

[8] An alternative tiebreaker mechanism for multiple maximum bids is to award the capacity to the earliest applicant. The Commission has stated that "no single tiebreaker method is definitely better than other methods; each system has advantages and disadvantages * * *. So long as its method is reasonable [a pipeline] may choose any method it wishes for inclusion as the default tiebreaker in its tariff." *Trailblazer Pipeline Co.,* 103 FERC ¶ 61,225, at 61,869 (2003), *order on reh'g and compliance filing,* 108 FERC ¶ 61,049, at 61,305 (2004).

capacity is high, shippers are strongly motivated to obtain as much of that valuable capacity as possible in order to take advantage of the opportunity for profit. Where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism.

7. Since the *pro rata* allocation mechanism will result in proportional shares of the capacity being distributed to the qualifying bidders, each affiliate with a maximum NPV bid could then release the capacity to a single affiliate or otherwise allow its affiliate effectively to obtain the use of the allocated capacity, resulting in an entity receiving a larger share than it would have been able to acquire by itself. Such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum bidders. This has the effect of harming entities that submit only one bid and, by extension, harming their customers.

8. The foregoing discussion is based upon recent Commission experience with multiple affiliate bidding.[9] Based on that experience, the Commission now proposes to revise its regulations to make explicit that, unless independent business reasons exist, as discussed further below, such bidding is inappropriate and, therefore, prohibited.

II. Prohibition on Multiple Affiliate Bidding in Open Seasons for Pipeline Capacity

9. The Commission is of the view that multiple affiliate bidding as described above lessens competition because other bidders not engaging in similar conduct will necessarily receive less capacity—not because such bidders value the capacity any less, but because they bid only through the unit of the company intending to use the capacity or because they did not have multiple affiliates. Those who submit bids by multiple affiliates receive a disproportionate share of the available capacity, placing bidders that did not submit bids by multiple affiliates at a competitive disadvantage. In theory, a company could employ this strategy to the extreme by bidding hundreds or even thousands of affiliates in a single open season to squeeze out competitors and give that company a dominant share of the capacity. The affiliates bidding would not need to have any direct customers or employees to confer the competitive advantage to the affiliate designed to benefit from the multiple affiliate bidding—in fact, a company could create affiliate corporations merely for the sake of bidding in open seasons to obtain the benefit of multiple affiliate bidding. Regardless of the degree to which multiple affiliate bidding is used to obtain a competitive advantage, ultimately bidders that do not submit bids by multiple affiliates will be harmed, and by extension their customers will be harmed, by losing valuable capacity to bidders that employ a multiple affiliate bidding strategy.

10. Furthermore, this multiple bidding behavior frustrates the Commission's policy of allocating capacity to the shipper that values it the most. By bidding multiple affiliates under a *pro rata* tiebreaker, an entity can gain a greater share of valuable capacity not because it values the capacity more than other bidders, but merely because it arranges to submit more maximum NPV bids through the use of affiliates.

11. The Commission, however, recognizes that not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism. In some cases, affiliates may have independent business reasons for submitting their bids. For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. When affiliates bid in such cases, other bidders are not unduly harmed, undue discrimination is not practiced, and Commission policy is not violated.

12. Although there may be instances where affiliates have an independent business reason for bidding for given capacity, in the Commission's view amendments to our existing regulations are necessary to prevent entities without such independent reasons from defeating a *pro rata* allocation mechanism by using multiple affiliate bidding to lessen competition and obtain more capacity than they could independently. Therefore, the Commission proposes to add a new section 284.15 to its regulations, prohibiting multiple affiliates of the same entity from participating in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of part 284 of the Commission's regulations in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission proposes that, for purposes of the new regulation, the term "affiliate" be defined as provided in section 358.3(a)(1) and (3) of the Commission's existing regulations.[10]

13. It is impossible to describe in advance every situation that demonstrates an independent business reason. This phrase is intended to assure companies bidding for capacity that our rule will not prohibit transactions with economic substance, in which the bidding affiliate is providing service of value to its customers that is facilitated or enhanced by the capacity being acquired, such as the scenarios described in P 11. Those scenarios are illustrative of situations in which a business unit uses awarded capacity to serve its own customers or otherwise acts consistently with its business plan, interests, and obligations. Indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an "alter ego" of an affiliate or parent. The independent business reason criterion ensures that bidders for pipeline capacity act in a market-driven, pro-competitive manner, not in an effort to gain an unfair competitive advantage in acquiring capacity. The general guidance provided here reflects the fact that we oversee a dynamic and evolving market where addressing yesterday's concerns may not address tomorrow's concerns. Over time, however, experience in applying this rule should be instructive to both the Commission and capacity market participants. As we

[9] *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 (2009) (order approving stipulations and agreements). *See also Trailblazer Pipeline Co.,* 101 FERC ¶ 61,405 (2002), *order on technical conference and denying reh'g,* 103 FERC ¶ 61,225 (2003), *order on reh'g and compliance filing,* 108 FERC ¶61,049 (2004). The Commission notes that the conduct on Trailblazer predated section 4A of the NGA, 15 U.S.C. 717c–1 (2006), the anti-manipulation authority granted to the Commission in the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

[10] 18 CFR 358.3(a)(1) and (3) (2010). Section 358.3(a)(1) provides that an affiliate of a specified entity is "another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit." Section 358.3(a)(3) defines the term "control."

apply the rule, we will be mindful of the fact that we are not only taking steps to assure non-discriminatory access to capacity but also providing guidance to market participants in general.[11]

14. This proposed rule is designed to ensure that an entity cannot use multiple affiliates solely to secure a larger allocation of capacity than it could acquire by itself. The proposed rule would also provide clear notice to parties participating in open seasons for interstate pipeline capacity that multiple affiliate bidding and subsequent release of acquired capacity to one affiliate, or other devices to confer the value of the capacity on one affiliate, are prohibited.

III. Prohibition on Release of Capacity

15. The Commission adopted its capacity release program as part of the restructuring of interstate natural gas pipelines required by Order No. 636.[12] The capacity release program permits firm shippers to release their capacity to others when they are not using it.[13] The Commission notes that some companies bidding with multiple affiliates have used capacity release as the final step in consolidating multiple shares of capacity for use by one of the company's units.[14] By releasing the capacity acquired in the open season, affiliates are able to transfer the capacity each acquires to a single company that benefits by obtaining more capacity than it could have obtained by itself.

16. In order to prevent the use of capacity release or other mechanisms as part of a scheme to game a *pro rata* allocation by transferring the benefit of the capacity to the affiliate that has a business use for the capacity, the Commission proposes to prohibit affiliates from releasing any capacity obtained in an open season pursuant to a *pro rata* allocation to any affiliate or otherwise from allowing any affiliate effectively to obtain the use of the allocated capacity. This will not inhibit two or more affiliates from obtaining and using valuable *pro rated* capacity where they each have an independent business reason for their bids. If the affiliate has an independent business reason for initially bidding on the capacity, it presumably has a need for the capacity once it has been awarded it. Therefore, requiring the capacity-winning affiliate to retain the capacity in such a circumstance should present little, if any, hardship to such affiliate. If a company believes that retaining capacity in a certain case would in fact create a hardship to an affiliate, the company can seek a waiver of the prohibition.[15]

17. This prohibition against capacity release reinforces the prohibition against multiple affiliate bidding unless each affiliate has an independent business reason for submitting a bid by further deterring affiliates from bidding for capacity for which they have no independent use. Should an affiliate violate the prohibition against multiple affiliate bidding, that affiliate would incur an additional violation with resulting penalties for transferring the advantage of the multiple affiliate bidding to the affiliated entity that would benefit from it. This complementary prohibition provides an additional deterrent to violation of the first prohibition, helping to ensure that the only instances of multiple affiliate bidding are those with independent business reasons for each bid. In the Commission's view, this prohibition, in combination with the provision prohibiting multiple affiliate bidding unless each affiliate has an independent business reason for submitting a bid, will fairly ensure that both steps of the gaming process are prohibited.

IV. Regulatory Requirements

A. Information Collection Statement

18. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[16] The proposed regulations discussed above do not impose reporting or recordkeeping requirements on applicable entities as defined by the Paperwork Reduction Act.[17] As a result, the Commission is not submitting this NOPR to OMB for review and approval.

B. Environmental Analysis

19. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[20] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

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[11] The approach taken here is similar to that taken in Order No. 644, which adopted market behavior rules for sellers of natural gas. *Amendments to Blanket Sales Certificates,* Order No. 644, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied* 107 FERC ¶ 61,174 (2004). Order No. 644 adopted rules that prohibited transactions without a "legitimate business purpose" and that were "intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas." In that case the rule prohibited certain transactions (such as wash trades and collusion), but the Commission specifically declined to limit the rule to pre-determined circumstances. Order No. 644, FERC Stats. & Regs. ¶ 31,153 at P 32–36. Similarly, here we recognize scenarios in which the independent business reason standard can be met, and decline to limit the rule to pre-determined circumstances. The relevant market behavior rules adopted in Order No. 644 were rescinded after the Commission adopted section 1c.1 of the Regulations. *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates,* Order No. 673, FERC Stats. & Regs. ¶ 31,207 (2006).

[12] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, 57 FR 13267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,939 (1992), *order on reh'g,* Order No. 636–A., 57 FR 36128 (August 12, 1002), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,950 (1992); *order on reh'g,* Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part, vacated and remanded in part, United Dist. Cos.* v. *FERC,* 88 F.3d 1105 (DC Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[13] In brief, under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper on a long term, year or more release, may pay less than the pipeline's maximum tariff rate, but not more. 18 CFR 284.8(e) (2010). The results of all releases are posted by the pipeline on its Internet Web site and made available through standardized, downloadable files.

[14] *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 at P 13, 18.

[15] If multiple affiliate bidding occurs in open seasons for relatively short term capacity, hardship is unlikely. If multiple affiliates acquire longer-term capacity, later changes in markets or corporate structure could create a hardship for an affiliate to keep the capacity it had been awarded. For example, a successful bidder might lose the market for which the capacity had been obtained and wish to release the capacity to an affiliate for other use, or a company may reorganize to merge the successful bidder with another affiliate or to reassign the successful bidder's functions to another affiliate. In such cases, the affected entity should seek a waiver of the prohibition and present the facts that support a release of the capacity to an affiliate.

[16] 5 CFR 1320.11 (2010).

[17] 44 U.S.C. 3502(2)–(3) (2006).

[18] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶ 30,783 (1987).

[19] 18 CFR 380.4 (2010).

[20] 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27)(2010).

C. Regulatory Flexibility Act

20. The Regulatory Flexibility Act of 1980 (RFA) [21] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[22] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[23]

21. The rule proposed herein should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the rules proposed herein, if finalized, would apply, do not fall within the RFA's definition of small entities. In addition, the proposed rule is only triggered if more than one affiliate of the same entity participates in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, and each affiliate does not have an independent business reason for submitting a bid. Therefore, the rule would only affect a limited number of small entities. The rules proposed herein, if finalized, will not have a significant economic effect on these small entities because the rule does not impose any reporting or recordkeeping requirements. Therefore, the Commission certifies that the proposed rules will not have a significant economic effect on a substantial number of small entities.

D. Comment Procedures

22. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 45 days from publication in the **Federal Register**. Comments must refer to Docket No. RM11–15–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

23. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

24. Commenters that are not able to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

26. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

27. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, Code of Federal Regulations, to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.15 is added to read as follows.

§ 284.15 Bidding by affiliates in open seasons for pipeline capacity.

(a) Multiple affiliates of the same entity may not participate in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of this part, in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid.

(b) If more than one affiliate of the same entity participates in an open season subject to paragraph (a) of this section, none of those affiliates may release any capacity obtained in that open season to any affiliate, or otherwise allow any affiliate effectively to obtain the use of the allocated capacity.

(c) For purposes of this section, an affiliate is any person that satisfies the definition of affiliate in §§ 358.3(a)(1) and (3) of this chapter with respect to another entity participating in an open season subject to paragraph (a) of this section.

[FR Doc. 2011–8915 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 312, 511, and 812

[Docket No. FDA–2011–N–0079]

RIN 0910–AG49

Disqualification of a Clinical Investigator

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations to expand the scope of clinical investigator disqualification. Under this proposal, when the Commissioner of Food and Drugs determines that an investigator is

[21] 5 U.S.C. 601–612 (2006).

[22] 5 U.S.C. 605(b) (2006).

[23] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623 (2006)). Section 3 defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

ineligible to receive certain test articles (drugs, devices, or new animal drugs), the investigator also will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA. This proposal is based in part upon recommendations from the Government Accountability Office, and is intended to help ensure adequate protection of research subjects and the quality and integrity of data submitted to FDA. FDA also is amending the list of regulatory provisions under which an informal regulatory hearing is available by changing the scope of certain provisions and adding regulatory provisions that were inadvertently omitted.

DATES: Submit either electronic or written comments on the proposed rule by July 12, 2011. See section VII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0079 and/or RIN number 0910–AG49, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0079 and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Pfaender, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5129, Silver Spring, MD 20993, 301–796–8340.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Under current regulations, a clinical investigator disqualified by the Commissioner of Food and Drugs (the Commissioner) is ineligible to receive a particular type of FDA-regulated test article only; *i.e.,* drugs (including biologics) in § 312.70 (21 CFR 312.70); new animal drugs in § 511.1(c) (21 CFR 511.1(c)); or devices in § 812.119 (21 CFR 812.119). The proposed rulemaking will amend §§ 312.70, 511.1(c), and 812.119 to provide that when the Commissioner determines that a clinical investigator is ineligible to receive the test article under that provision (*e.g.,* drugs in § 312.70), the clinical investigator also will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

Other proposed revisions are intended to clarify and harmonize the clinical investigator disqualification regulations in parts 312, 511, and 812 (21 CFR parts 312, 511, and 812). FDA proposes this rulemaking to help protect the rights and safety of subjects involved in FDA-regulated investigations and to help ensure the reliability and integrity of the data used to support marketing of products regulated by FDA.

II. Background

FDA inspects the records of a clinical investigator to evaluate the quality and integrity of clinical data used to support applications under review by FDA and to evaluate whether protections are afforded to participating research subjects, where required. FDA may consider disqualification of a clinical investigator when FDA has information that an investigator has repeatedly or deliberately failed to comply with applicable requirements for the conduct of clinical investigations, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report.

Disqualification of an investigator is initiated by the appropriate FDA Center depending upon the particular type of test article under study by the investigator in the clinical investigation. For example, the Center for Devices and Radiological Health may pursue disqualification of a clinical investigator who conducted a device study and allegedly violated the regulations. The regulations provide the investigator, who is subject to disqualification, an opportunity to be heard and explain the matter(s) complained of; *i.e.,* explain the alleged violation(s). If the explanation offered is not accepted by the Center, the investigator will be given an opportunity for an informal regulatory hearing under part 16 (21 CFR part 16). After evaluating all available information, including any explanation presented by the investigator, the Commissioner issues a Commissioner's decision regarding the eligibility of the investigator to receive a particular type of test article. When disqualified by a Commissioner's decision, the investigator is no longer eligible to receive the particular type of test article (drugs, devices, or new animal drugs) under study when the violations occurred. Under current regulations, an

investigator disqualified by a Commissioner's decision as ineligible to receive investigational devices, for example, may still be eligible to receive investigational drugs (including biologics), because the regulations do not specifically prohibit such an investigator from receiving other types of test articles.

In September 2009, the Government Accountability Office (GAO) released a final report on FDA's oversight of clinical investigators (Ref. 1). In that report, the GAO recommended, among other things, that FDA extend disqualification by a Commissioner's decision to include ineligibility to receive drugs, biologics, and medical devices. The GAO noted that FDA's disqualification regulations are included in separate sets of regulations and, as a result, the regulations as currently written limit the types of test articles to which disqualification applies and consequently, limits FDA's oversight of clinical investigators (Ref. 1 at page 40, under "FDA's Regulations Allow Disqualified Clinical Investigators to Conduct Trials for Other Medical Products"). The GAO elaborated, comparing disqualifications that resulted from a Commissioner's decision with those resulting from a consent agreement between FDA and the investigator. That is, a consent agreement may contain "more extensive restrictions by disqualifying the investigator from receiving any FDA-regulated investigational products (including drugs, biologics, devices, animal drugs, and food additives)" (Ref. 1 at page 41). The GAO concluded that it is critical for FDA to take action and to have the authority to take action to prevent clinical investigators who engaged in serious misconduct from doing so again, whether in research that involves drugs, biologics, or devices (Ref. 1 at page 42).

In past investigator disqualification actions, there is little, if any, evidence that an investigator disqualified from receiving one type of test article (*e.g.,* drugs) later conducted a clinical investigation studying a different type of test article (*e.g.,* devices). Even so, FDA agrees with the GAO's recommendation and its underlying rationale to expand the scope of articles covered when an investigator is disqualified by a Commissioner's decision. This proposed action of explicitly extending a disqualified investigator's ineligibility to receive any FDA-regulated test article would help to reduce the risk of additional violations in other FDA-regulated investigations and thus, would help to ensure the integrity of clinical trial data and help reduce the risk to human subjects who participate in FDA-regulated investigations. This proposed rule may also lead to improved public confidence in the clinical data supporting FDA decisions.

We therefore propose that a clinical investigator disqualified by a Commissioner's decision will be ineligible to receive any test article under the disqualification regulations in parts 312, 511, or 812, and, in addition, the investigator will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA. Those products include drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products. To effect this change, FDA proposes to amend the current regulations in §§ 312.70, 511.1(c), and 812.119.

III. Description of the Proposed Rule

To harmonize the headings for the clinical investigator disqualification regulations in parts 312, 511, and 812, FDA proposes to change the heading in § 511.1(c) to match those currently in §§ 312.70 and 812.119. Therefore, we propose to change the heading in § 511.1(c) from "Withdrawal of eligibility to receive investigational-use new animal drugs" to "Disqualification of a clinical investigator". This revision will help to identify the investigator disqualification regulations pertaining to new animal drugs.

A. Disqualification Proceedings (§§ 312.70(a), 511.1(c)(1), and 812.119(a))

FDA proposes to revise the provisions currently in §§ 312.70(a), 511.1(c)(1), and 812.119(a), to clarify, simplify, and to harmonize those provisions. Also, for consistency with other proposed changes to the disqualification regulations, FDA proposes to change the scope of the question addressed during a part 16 hearing, should the investigator request and be granted an informal regulatory hearing.

1. Proposed Revisions to § 312.70(a)

- To harmonize the provisions in § 312.70(a) with those currently in § 812.119(a), we propose to add "repeatedly or deliberately" before the reference to submitting false information in any required report. The addition of "repeatedly or deliberately" before "submitted to FDA or to the sponsor false information in any required report," codifies FDA's current policies and makes consistent the clinical investigator disqualification regulations.
- To harmonize the provisions in § 312.70(a) with those currently in § 812.119(a), we propose to add a provision for accepting an investigator's explanation concerning the alleged misconduct. That is, if the investigator offers an explanation in writing or during an informal conference and the explanation is accepted by the applicable Center, the Center will discontinue pursuit of the disqualification proceeding. This proposed revision clarifies FDA's current policies and makes consistent the clinical investigator disqualification regulations.
- To simplify the regulations, we propose to change "Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research" to "applicable Center" after "If an explanation is offered but not accepted by the * * *".
- We propose to add "of this chapter" after "the investigator will be given an opportunity for a regulatory hearing under part 16 * * *", for clarity and to harmonize § 312.70(a) with the provisions currently in § 812.119(a).
- Regarding the question of whether the investigator is entitled to receive test articles, we propose to change "entitled" to "eligible" because "eligible" is the correct term for this provision.
- We propose to change the scope of the question addressed during a part 16 hearing, should the investigator request and be granted an informal hearing, from whether the investigator is eligible to receive "investigational new drugs" to whether the investigator is eligible to receive "test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA". Those FDA-regulated products include drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

2. Proposed Revisions to § 511.1(c)(1)

- To harmonize the investigator disqualification regulations, we propose to change the first words in the first sentence in § 511.1(c)(1) from "Whenever the Food and Drug Administration" to "If FDA".
- Although already applicable, we propose to add explicit provisions in § 511.1(c)(1), consistent with the current regulations in § 312.70(a), that a clinical investigator includes a sponsor-investigator. Because sponsor-

investigators must meet an investigator's regulatory responsibilities as well as a sponsor's, FDA has consistently considered sponsor-investigators to be subject to the clinical investigator disqualification provisions in studies of drugs, animal drugs, and devices.[1]

- To harmonize the provisions in § 511.1(c)(1) with the provisions currently in § 812.119(a), we propose to add "repeatedly or deliberately" before the reference to submitting false information in any required report. The addition of "repeatedly or deliberately" codifies FDA's current policies and makes consistent the clinical investigator disqualification regulations.
- To make the investigator disqualification regulations consistent, we propose to change the wording of the first sentence in § 511.1(c)(1) to read as follows, "If FDA has information indicating that an investigator (including a sponsor-investigator) has repeatedly or deliberately failed to comply with the conditions of these exempting regulations or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Center for Veterinary Medicine will furnish the investigator written notice of the matter complained of and offer the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, in an informal conference." For this first sentence, this proposal removes the reference to "in general terms" concerning the Center's written notice of the matter to the investigator. This proposal also replaces offering "him" with offering "the investigator" an opportunity to explain. At the end of this first sentence, the wording is changed from "in an informal conference and/or in writing" to "in writing, or, at the option of the investigator, in an informal conference."
- To harmonize the provisions in § 511.1(c)(1) with those currently in § 812.119(a), we propose to add a provision for accepting an investigator's explanation concerning the alleged misconduct. That is, if the investigator offers an explanation in writing or during an informal conference and the explanation is accepted by the affected Center, the Center will discontinue pursuit of the disqualification proceeding. This proposed revision clarifies FDA's current policies and makes consistent the clinical investigator disqualification regulations.
- For consistency with the regulations currently in §§ 312.70(a) and 812.119(a), we propose to change in the second sentence in § 511.1(c)(1) (the third sentence in this proposal), "shall have" to "will be given", and remove after "an opportunity for a regulatory hearing * * *" the clause, "before the Food and Drug Administration pursuant to * * *" Also, in this sentence, we propose to change the term "entitled" to the term "eligible".
- We propose to change the scope of the question addressed during a part 16 hearing, should the investigator request and be granted an informal hearing, from whether the investigator is eligible to receive "investigational new animal drugs" to whether the investigator is eligible to receive "test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA". Those FDA-regulated products include drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

3. Proposed Revisions to § 812.119(a)

- Although already applicable, we propose to add explicit provisions in § 812.119(a), consistent with the current regulations in § 312.70(a), that a clinical investigator includes a sponsor-investigator. Because sponsor-investigators must meet an investigator's regulatory responsibilities as well as a sponsor's, FDA has consistently considered sponsor-investigators to be subject to the clinical investigator disqualification provisions in studies of drugs, animal drugs, and devices.[2]
- To harmonize the provisions in § 812.119(a) with those currently in § 312.70(a), we propose to change after repeatedly or deliberately submitted "false information either to the sponsor of the investigation or * * *", to read instead, "to FDA or to the sponsor false information in any required report, * * *"
- To harmonize the provisions in § 812.119(a) with those currently in § 312.70(a), we propose to change the matter "under complaint" to the matter "complained of".
- For clarity and consistency with our current procedures and the proposed changes to §§ 312.70(a) and 511.1(c)(1), we propose to change the language in § 812.119(a) from "the disqualification process will be terminated" to "the Center will discontinue pursuit of the disqualification proceeding."
- For consistency with the proposed revisions to §§ 312.70(a) and 511.1(c)(1), we propose to add "applicable" before "Center" to read, "If an explanation is offered but not accepted by the applicable Center".
- Regarding the question of whether the investigator is entitled to receive test articles, we propose to change the term "entitled" to "eligible".
- We propose to change the scope of the question addressed during a part 16 hearing, should the investigator request and be granted an informal hearing, from whether the investigator is eligible to receive investigational devices to whether the investigator is eligible to receive "test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA". Those FDA-regulated products include drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

In summary, the proposed harmonized provisions in §§ 312.70(a), 511.1(c)(1), and 812.119(a) provide that when FDA has information indicating that a clinical investigator, including a sponsor-investigator, has repeatedly or deliberately failed to comply with the relevant regulatory requirements or has repeatedly or deliberately submitted to FDA or to the sponsor of the investigation false information in any required report, the applicable FDA Center notifies the investigator in writing of the alleged violations. This written notice offers the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, during an informal conference. If the investigator offers an explanation that is accepted by the applicable Center, that Center will discontinue pursuit of the disqualification proceeding. If, however, the investigator offers an explanation not accepted by the applicable Center, the investigator will be offered an opportunity to request an informal regulatory hearing [3] under part 16 [4] on the question of whether the investigator is eligible to receive test articles under

[1] See, for example, the final rule at 62 FR 46875, September 5, 1997; clarifying FDA's authority to reach sponsor-investigators under the regulations for disqualification of a clinical investigator.

[2] See, for example, the final rule at 62 FR 46875, September 5, 1997; clarifying FDA's authority to reach sponsor-investigators under the regulations for disqualification of a clinical investigator.

[3] FDA issues to the investigator a "Notice of Opportunity for Hearing". The investigator must show that there is a genuine and substantial issue of fact that warrants a hearing (§ 16.26(a)).

[4] See part 16, subpart D—Procedures for Regulatory Hearing.

the applicable part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA. Those FDA-regulated products include drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

B. Ineligibility To Receive Any Test Article (§§ 312.70(b), 511.1(c)(2), and 812.119(b))

1. Proposed Revisions to § 312.70(b)

- For consistency, we propose to refer to "repeatedly or deliberately" in the same order throughout the provision.
- For clarity, we propose to move after "submitted" the clause, "to FDA or to the sponsor". Therefore, the proposed provision reads, "or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, * * *".
- We propose to add a notification to the reviewing institutional review board(s) (IRB(s)) about the investigator's disqualification. This proposed change will harmonize § 312.70(b) with FDA's current procedures along with those provisions currently in § 812.119(b). IRBs play a significant role in ensuring that clinical investigators meet the applicable statutory and regulatory requirements.[5] We therefore propose to add this provision in § 312.70(b) to help ensure that any reviewing IRB is aware of the clinical investigator's disqualification.
- We propose to change "entitled" to "eligible".
- FDA proposes to harmonize the disqualification regulations by changing the investigator's ineligibility from receiving "investigational drugs" to ineligibility to receive "test articles under this part." We are also proposing that an investigator disqualified by a Commissioner's decision also will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.
- For clarity and consistency with our procedures, we propose to add an explicit reference concerning notification by FDA about the investigator's disqualification. That is, the investigator and sponsor will be notified about the basis for the disqualification determination. The notification to the sponsor, for example, will provide a statement of the basis for disqualification such as a list of the investigator's violations, and also include instructions concerning ongoing studies and any approved products containing the investigator's data.
- For consistency with our procedures, we propose to add that the reviewing IRB(s) also will be notified about the basis for the disqualification determination.

2. Proposed Revisions to § 511.1(c)(2)

- To harmonize the investigator disqualification regulations in § 511.1(c)(2) with those currently in §§ 312.70(b) and 812.119(b), we propose to change the first word "If" in § 511.1(c)(2) to read instead, "After evaluating all available information, including any explanation presented by the investigator, if the Commissioner determines that * * *".
- We propose to change the term "section" to "subchapter". The disqualification action is pursuant to the investigator's failure to comply with the conditions of the exempting regulations in subchapter E (21 CFR chapter I, subchapter E)—Animal drugs, feeds, and related products. Therefore, we propose "this subchapter" is the applicable and correct term as opposed to the narrower reference currently in § 511.1(c)(2) to "this section".
- For clarity and to harmonize § 511.1(c)(2) with the proposed investigator disqualification regulations in §§ 312.70(b) and 812.119(b), we propose to move and modify the clause "to the sponsor of an investigation" and add "to FDA" and "in any required report", to read, "or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, * * *".
- For clarity and to harmonize the investigator disqualification regulations, we propose to change "he" to "the investigator".
- We propose to change "entitled" to "eligible".
- FDA proposes to harmonize the disqualification regulations by changing the investigator's ineligibility from receiving "investigational use new animal drugs" to ineligibility to receive "test articles under this part." We are also proposing that an investigator disqualified by a Commissioner's decision also will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.
- For clarity and consistency with our procedures, we propose to add an explicit reference concerning notification by FDA about the investigator's disqualification. That is, the investigator and sponsor will be notified about the basis for the disqualification determination. The notification to the sponsor, for example, will provide a statement of the basis for disqualification such as a list of the investigator's violations, and also include instructions concerning ongoing studies and any approved products containing the investigator's data.

3. Proposed Revisions to § 812.119(b)

- For consistency, we propose to refer to "repeatedly or deliberately" in the same order throughout the provision.
- For clarity and to harmonize § 812.119(b) with the proposed investigator disqualification regulations in §§ 312.70(b) and 511.1(c)(2), we propose to move and modify the clause "to the sponsor of an investigation", add "to FDA", and remove "either", to read, "or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, * * *".
- We propose to change "entitled" to "eligible".
- FDA proposes to harmonize the disqualification regulations by changing the investigator's ineligibility from receiving "investigational devices" to ineligibility to receive "test articles under this part." We are also proposing that an investigator disqualified by a Commissioner's decision also will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.
- For clarity and consistency with our procedures, we propose to add an explicit reference concerning notification by FDA about the investigator's disqualification. That is, the investigator, sponsor, and reviewing IRB(s) will be notified about the basis for the disqualification determination. The notification to the sponsor, for example, will provide a statement of the basis for disqualification such as a list of the investigator's violations, and also include instructions concerning ongoing

[5] 63 FR 55873 at 55874, October 19, 1998.

studies and any approved or cleared products containing the investigator's data.

Therefore, as proposed, an investigator determined to be ineligible to receive test articles under one part of FDA's regulations also would be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products. This proposal is consistent with the underlying rationale for disqualifying a clinical investigator, which is to preserve the integrity of study data and to help ensure the safety, rights, and welfare of study subjects. As proposed, those principles would apply to all test articles and studies; an investigator who is determined to have repeatedly or deliberately violated the regulations while conducting a study of a particular type of test article sufficient to warrant disqualification would thus be ineligible to receive any FDA-regulated test article or conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA.

C. Disqualified Investigator's Data in Applications and Submissions to FDA (§§ 312.70(c), 511.1(c)(3), and 812.119(c))

1. Proposed Revisions to § 312.70(c)

Currently, § 312.70(c) provides, "Each IND and each approved application submitted under part 314 containing data reported by an investigator who has been determined to be ineligible to receive investigational drugs will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of the investigation or essential to the approval of any marketing application." FDA proposes to revise the current regulations in § 312.70(c) to clarify the applicability of this provision, update this provision consistent with §§ 312.70(b), 511.1(c)(2), and 812.119(b) of this proposal, and to harmonize the disqualification regulations in §§ 312.70(c), 511.1(c)(3), and 812.119(c). Therefore, we propose to amend § 312.70(c) to change "Each IND and each approved application submitted under part 314" to "Each application or submission to FDA under the provisions of this chapter". The "provisions of this chapter" refers to chapter I and includes INDs and approved applications submitted under part 314. Also, we propose to change "drugs" to "FDA-regulated test articles"; "continuation of the investigation" to "continuation of any investigation"; and add after "essential to the approval of any marketing application" the phrase "essential to the continued marketing of an FDA-regulated product."

2. Proposed Revisions to § 511.1(c)(3)

Currently, § 511.1(c)(3) provides, "Each 'Notice of Claimed Investigational Exemption for a New Animal Drug' and each approved new animal drug application containing data reported by an investigator who has been determined to be ineligible to receive investigational-use new animal drugs will be examined to determine whether he has submitted unreliable data that are essential to the continuation of the investigation or essential to the approval of any new animal drug application." FDA proposes to revise the current regulations in § 511.1(c)(3) to clarify the applicability of this provision, update this provision consistent with §§ 312.70(b), 511.1(c)(2), and 812.119(b) of this proposal, and to harmonize the disqualification regulations in §§ 312.70(c), 511.1(c)(3), and 812.119(c). Therefore, we propose to revise § 511.1(c)(3) to provide, "Each application or submission to FDA under the provisions of this chapter and containing data reported by an investigator who has been determined to be ineligible to receive FDA-regulated test articles will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of any investigation or essential to the approval of any marketing application, or essential to the continued marketing of an FDA-regulated product." The "provisions of this chapter" refers to chapter I and includes a notice of claimed investigational exemption for a new animal drug and an approved new animal drug application.

3. Proposed Revisions to § 812.119(c)

Currently, § 812.119(c) provides, "Each investigational device exemption (IDE) and each cleared or approved application submitted under this part, subpart E of part 807 of this chapter, or part 814 of this chapter containing data reported by an investigator who has been determined to be ineligible to receive investigational devices will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of the investigation or essential to the approval or clearance of any marketing application." FDA proposes to revise the current regulations in § 812.119(c) to clarify the applicability of this provision, update this provision consistent with §§ 312.70(b), 511.1(c)(2), and 812.119(b) of this proposal, and to harmonize the disqualification regulations in §§ 312.70(c), 511.1(c)(3), and 812.119(c). Therefore, we propose to revise § 812.119(c) to provide, "Each application or submission to FDA under the provisions of this chapter and containing data reported by an investigator who has been determined to be ineligible to receive FDA-regulated test articles will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of any investigation or essential to the clearance or approval of any marketing application, or essential to the continued marketing of an FDA-regulated product." The "provisions of this chapter" refers to chapter I and includes investigational device exemptions (IDEs), and cleared or approved applications submitted under part 812; 21 CFR part 807, subpart E; or part 814 (21 CFR part 814).

D. Disqualified Investigator's Data in Applications and Submissions to FDA—Sponsor Notification, Opportunities, and Responsibilities (§§ 312.70(d), 511.1(c)(4), and 812.119(d))

1. Proposed Revisions to § 312.70(d)

- In accordance with FDA's procedures and for consistency with the provisions currently in § 812.119(d), we propose to add "and the reviewing IRB(s)" after "shall terminate the IND immediately and notify the sponsor * * *".
- We propose to change "determination" to "termination". This correction is consistent with the regulations currently in §§ 511.1(c)(4) and 312.44 and, therefore, will harmonize and clarify the regulations. This proposal provides, "If a danger to the public health exists * * * the Commissioner shall terminate the IND immediately and notify the sponsor and the reviewing IRB(s) of the termination."
- We propose to add a new sentence at the end of § 312.70(d), to clarify and emphasize the sponsor's responsibilities under this provision. That is, we propose to add that when the Commissioner determines that an investigation may not be considered in support of a research or marketing application, or a notification or petition submission, this determination does not relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

2. Proposed Revisions to § 511.1(c)(4)

- For the purpose of plain language and for consistency with the current and proposed investigator disqualification regulations, FDA proposes to make corrections to § 511.1(c)(4):
  - Change "he shall first" to "the Commissioner will",
  - Change "before the Food and Drug Administration pursuant to" to "before FDA under",
  - Remove "on whether the exemption should be terminated",
  - Change "he" to "the Commissioner",
  - Change "forthwith" to "immediately",
  - Change "event" to "case",
  - Change "the Food and Drug Administration pursuant to" to "FDA under", and
  - Remove "(see 42 FR 15075, March 22, 1977)".
- We propose to add a new sentence at the end of § 511.1(c)(4), to clarify and emphasize the sponsor's responsibilities under this provision. That is, we propose to add that when the Commissioner determines that an investigation may not be considered in support of a research or marketing application, or a notification or petition submission, this determination does not relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

3. Proposed Revisions to § 812.119(d)

- We propose to change "determination" to "termination". This correction is consistent with the regulations currently in § 511.1(c)(4) and therefore will harmonize and clarify the regulations. Also, we propose to add "(s)" at the end of "IRB" because there might be more than one reviewing IRB, to provide that "the Commissioner shall terminate the IDE immediately and notify the sponsor and the reviewing IRB(s) of the termination."
- We propose to add a new sentence at the end of § 812.119(d). As proposed for §§ 312.70(d) and 511.1(c)(4), we propose to add that when the Commissioner determines that an investigation may not be considered in support of a research or marketing application, or a notification or petition submission, this determination does not relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

E. Disqualified Investigator's Data in Applications and Submissions to FDA—Withdrawal of Product Approval (§§ 312.70(e), 511.1(c)(5), and 812.119(e))

1. Proposed Revisions to § 312.70(e)

The current investigator disqualification regulations provide that if the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the continued approval of the drug product for which the data were submitted cannot be justified, the Commissioner will proceed to withdraw approval of the drug product in accordance with the applicable provisions of the Federal Food, Drug, and Cosmetic Act as amended (the FD&C Act). We also note that the Commissioner would revoke any biologics license approved under the Public Health Service Act. To harmonize the investigator disqualification regulations in §§ 312.70(e), 511.1(c)(5), and 812.119(e), we propose to remove the reference to "drug". To keep the investigator disqualification regulations consistent, this proposal also changes the reference to the applicable provisions of the FD&C Act to a reference to the applicable provisions of the relevant statutes.

2. Proposed Revisions to § 511.1(c)(5)

The current investigator disqualification regulations in § 511.1(c)(5) provide that if the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the "data remaining are such that a new animal drug application would not have been approved, he will proceed to withdraw approval of the application in accordance with section 512(e) of the act." This proposal does not change the meaning of this provision, however, for simplicity and to keep the investigator disqualification regulations consistent, we propose changes to harmonize the investigator disqualification regulations, as follows:

- Change the "data remaining are such that a new animal drug application would not have been approved" to "continued approval of the product for which the data were submitted cannot be justified",
- Change "he" to "the Commissioner",
- Change "application" to "product", and
- Change "in accordance with section 512(e) of the act" to "in accordance with the applicable provisions of the relevant statutes".

3. Proposed Revisions to § 812.119(e)

The current investigator disqualification regulations provide that if the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the continued clearance or approval of the marketing application for which the data were submitted cannot be justified, the Commissioner will proceed to withdraw approval or rescind clearance of the medical device in accordance with the applicable provisions of the FD&C Act. We propose to harmonize and simplify the provisions in §§ 312.70(e), 511.1(c)(5), and 812.119(e). Therefore, in § 812.119(e), we propose to change "marketing application" and "medical device" to "product" and change "in accordance with the applicable provisions of the act" to "in accordance with the applicable provisions of the relevant statutes". Also, we propose to change the order of "withdraw approval or rescind clearance" to "rescind clearance or withdraw approval" to match respectively the order at the beginning of the sentence.

F. Other Proceedings

Although not explicit in the proposed codified, the disqualification of an investigator is independent of, and neither in lieu of nor a precondition to, other proceedings or actions authorized by the FD&C Act. That is, at any time, FDA may, through the Department of Justice, institute any appropriate judicial proceedings (civil or criminal) and any other appropriate regulatory action, in addition to or in lieu of, and before, at the time of, or after, disqualification. Also, FDA may refer pertinent matters to another Federal, State, or local government agency for any action determined appropriate by that agency.

G. Reinstatement (§§ 312.70(f), 511.1(c)(6), and 812.119(f))

FDA proposes minor revisions to the regulations currently in §§ 312.70(f), 511.1(c)(6), and 812.119(f), to make the investigator disqualification regulations consistent. This proposal changes the references to an investigator who has been determined to be ineligible to receive "investigational drugs", "investigational-use new animal drugs", and "investigational devices" currently in those provisions to, instead, reference an investigator who has been determined to be ineligible under the appropriate paragraph in the relevant section (*e.g.,* in proposed § 312.70(f), "an investigator who has been determined to be ineligible under paragraph (b) of

[§ 312.70] may be reinstated as eligible * * *"). This proposal also changes the current references to "parts 50 and 56" and to "the provisions of this part" in §§ 312.70(f) and 812.119(f), and the reference to "the exempting regulations in this section" in § 511.1(c)(6), to "the applicable provisions of this chapter" (*i.e.,* chapter I). We also added, for consistency with the proposed changes to §§ 312.70(b), 511.1(c)(2), and 812.119(b), the phrase, "and will conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA". We therefore propose that an investigator who has been determined to be ineligible under §§ 312.70(b), 511.1(c)(2), or 812.119(b), may be reinstated as eligible when the Commissioner determines that the investigator has presented adequate assurances that the investigator will employ all test articles, and will conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, solely in compliance with the applicable provisions of chapter I.

H. Part 511 Definitions (§ 511.3)

FDA proposes to amend part 511 by adding a new section that provides definitions for a contract research organization, investigator, sponsor, and sponsor-investigator. We propose to add those definitions to harmonize part 511 with other regulations for the disqualification of a clinical investigator.

IV. Regulatory Hearing Before the Food and Drug Administration

We propose to add to 16.1(b)(2) an entry for 812.119 and to revise the entries for 312.70 and 511.1(c)(1). Also, the list of regulatory provisions under which a part 16 regulatory hearing is available (§ 16.1(b)(2)) is incomplete. The provisions for § 58.204(b) (21 CFR 58.204(b)), relating to disqualifying a testing facility, and § 822.7(a)(3) (21 CFR 822.7(a)(3)), relating to an order to conduct postmarket surveillance of a medical device under section 522 of the FD&C Act (21 U.S.C. 360l), were inadvertently omitted. We, therefore, propose to amend part 16 by adding those provisions.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Legal Authority

The disqualification of a clinical investigator is a remedial measure. The purpose of disqualifying investigators who violate the regulations is to preserve the integrity of data needed to assess the safety and effectiveness of an FDA-regulated product before the product is made available to the public, and to protect the safety of study subjects during the conduct of a clinical investigation and patient safety after the approval or clearance of a marketing application.

Although the concept of disqualification is not explicitly mentioned in the FD&C Act, FDA has the authority to disqualify clinical investigators who violate FDA's regulations. The Supreme Court in *Weinberger* v. *Bentex Pharmaceuticals, Inc.,* 412 U.S. 645, 653 (1973) has recognized that FDA has authority that "is implicit in the regulatory scheme, not spelled out in *haec verba*" in the statute. As stated in *Morrow* v. *Clayton,* 326 F.2d 36, 44 (10th Cir. 1963):

[I]t is a fundamental principle of administrative law that the powers of an administrative agency are not limited to those expressly granted by the statutes, but include, also, all of the powers that may fairly be implied therefrom.

See *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356 (1973), and *National Petroleum Refiners Association* v. *FTC,* 482 F.2d 672 (DC Cir. 1973). See also *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609 (1973); *National Nutritional Foods Association* v. *Weinberger,* 512 F.2d 688, *cert denied,* 423 U.S. 827 (1975); *United States* v. *Nova Scotia Food Products Corp.,* 568 F.2d 240, 246–248 (2d Cir. 1977); *American Frozen Food Institute* v. *Mathews* 413 F.Supp. 548 (D.D.C. 1976) *aff'd per curiam,* 555 F.2d 1059 (DC Cir. 1977); *National Confectioners Association* v. *Califano,* 569 F.2d 690 (DC Cir. 1978); and *National Association of Pharmaceutical Manufacturers* v. *FDA,* 637 F.2d 877 (2d Cir. 1981).

"[R]egulatory acts should be given a practical construction, and one which will enable the agency to perform the duties required of it by Congress." *Federal Deposit Ins. Corp.* v. *Sumner Fin. Corp.,* 451 F.2d 898, 904 (5th Cir. 1971). Congressional inaction on proposed legislation that would state expressly an agency's authority to act does not support an inference that the agency lacks implicit authority to act under existing legislation. *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 381–382 n. 11 (1969). See also *Leist* v. *Simplot,* 638 F.2d 283, 318 (2d Cir. 1980), *affirmed sub nom. Merrill Lynch, Pierce, Fenner & Smith* v. *Curran,* 456 U.S. 353 (1982). The Supreme Court has often recognized "the construction of a statute by those charged with its administration is entitled to substantial deference." *United States* v. *Rutherford,* 442 U.S. 544 (1979). *Board of Governors of FRS* v. *First Lincolnwood,* 439 U.S. 234, 248, 99 S.Ct. 505, 513, 58 L.Ed.2d 484 (1978) (the Court's conclusion "is influenced by the principle that courts should defer to an agency's construction of its own statutory mandate, *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. at 381; *Commissioner* v. *Sternberger's Estate,* 348 U.S. 187, 199 (1955), particularly when that construction accords with well established congressional goals." 439 U.S. at 251); *Bayside Enterprises, Inc.* v. *NLRB,* 429 U.S. 298, 304, 97 S.Ct. 576, 581, 50 L.Ed.2d 494 (1977); *Udall* v. *Tallman,* 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965).

Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), the Commissioner is empowered to promulgate regulations for the efficient enforcement of the FD&C Act. Regulations issued by the Commissioner under section 701(a) for determining whether a clinical investigation of a drug intended for human use, among other things, was scientifically reliable and valid to support approval of a new drug, have been upheld by the Supreme Court (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*); see also *Upjohn Co.* v. *Finch,* 422 F.2nd 944 (6th Cir. 1970); and *Pharmaceutical Manufacturers Association* v. *Richardson,* 318 F.Supp. 301 (D.Del. 1970)).

Furthermore, sections 505(i), 512(j) and 520(g) of the FD&C Act regarding clinical investigations that require prior FDA authorization direct the Commissioner to promulgate regulations to protect the public health in the course of those investigations. Also, sections 505(i)(1), 512(j), and 520(g)(2)(A) of the FD&C Act require that investigations be conducted by "experts qualified by scientific training and experience." An investigator who repeatedly or deliberately violates the regulations or who repeatedly or deliberately submits false information would not be considered a qualified expert with the experience required to conduct investigations of FDA-regulated articles. Among other stated objectives, the proposed rulemaking is intended to fulfill those mandates.

The Commissioner therefore concludes that legal authority to promulgate those regulations regarding clinical investigators exists under sections 505(i), 512(j), 520(g) and 701(a)

of the FD&C Act, as essential to protection of the public health and safety and to enforcement of the agency's responsibilities under sections 409, 502, 503, 505, 506, 510, 512, 513, 514, 515, 518, 519, 520 and 801 of the FD&C Act (21 U.S.C. 348, 352, 353, 355, 356, 360, 360b, 360c, 360d, 360e, 360h, 360i, 360j and 381), as well as the responsibilities of FDA under section 351 of the Public Health Service Act (42 U.S.C. 262).

VII. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after the date of publication of the final rule in the **Federal Register**.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule does not impose new requirements on any entity and therefore has no associated compliance costs, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Objective

The objective of the proposed rule is to strengthen the process for ensuring the reliability and integrity of the clinical trial data supporting FDA decision-making on product applications and to help ensure the adequate protection of research subjects participating in FDA-regulated clinical investigations. Specifically, this rule would expand the scope of FDA's disqualification actions so that a disqualified clinical investigator is ineligible to receive any FDA-regulated test article. That is, an investigator determined to be ineligible to receive test articles under parts 312, 511 or 812, will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products. This action would help reduce the risk to human subjects who participate in FDA-regulated clinical investigations by explicitly extending a disqualified investigator's ineligibility to receive any FDA-regulated test article. In addition, the proposed rulemaking would establish uniform language across the several existing regulations that address investigator disqualification.

B. Background

In 2009, the GAO conducted a study of FDA's oversight of clinical investigators who conduct research involving new drugs, biologics and medical devices, "Oversight of Clinical Investigators—Action Needed To Improve Timeliness and Enhance Scope of FDA's Debarment and Disqualification Processes for Medical Product Investigators" (Ref 1.). Among its findings, the GAO recommended that FDA amend its regulations to ensure that those clinical investigators who have engaged in misconduct sufficient to warrant disqualification for one type of investigational medical product are not able to serve as clinical investigators for other types of medical products.

Currently, FDA regulations provide authority to disqualify researchers conducting clinical investigations of medical products when FDA determines that the investigators have not followed the rules intended to protect study subjects, or who have submitted false information. The actions to disqualify clinical investigators are initiated because FDA has evidence that the clinical investigator repeatedly or deliberately violated FDA's regulations governing the proper conduct of clinical investigations. However, the regulatory language may allow a disqualified investigator to participate in clinical investigations as long as the investigational products studied are different from the product involved in the disqualification.

C. Baseline

To develop a baseline of the disqualification actions that would be affected by this proposed rule, FDA's Office of Good Clinical Practice reviewed all FDA disqualification actions over a 10-year period, 1998–2007. This time-period was selected to provide a data set large enough to analyze and to allow sufficient elapsed time from initiation to final action to characterize completed actions. Over this 10-year period, FDA has initiated a total of about 60 disqualification actions, or an average of 6 per year. Of those 60 disqualification actions, 5 percent of the investigators were not disqualified. Approximately 75 percent of clinical investigators entered into a consent agreement or a restricted agreement that restricts their ability to investigate other FDA-regulated products, *i.e.,* products different from the one in the study (or studies) that led to disqualification. A small number of clinical investigators, about 20 percent of the disqualification actions, were ultimately disqualified following a Commissioner's decision. In those matters, FDA does not have regulatory authority to prohibit those investigators, who are disqualified by a Commissioner's decision, from conducting investigations involving other FDA-regulated articles. We have little, if any, evidence that any of the investigators to date who have been disqualified via a Commissioner's decision have conducted investigations with other types of FDA-regulated test articles. Nonetheless, the agency agrees with GAO's recommendation that FDA have in place uniform and enforceable regulatory requirements to prevent clinical investigations in other product areas by disqualified clinical investigators.

D. Costs of the Proposed Rule

We estimate that there may be an average of about 1 or 2 matters per year of clinical investigators who are ultimately disqualified via a Commissioner's decision. Because the majority of disqualification actions are concluded by consent agreements that specifically preclude the investigator from investigating other FDA-regulated articles and current practices already

reduce the risk of such occurrences, we do not expect that this proposed rule would impose additional costs. Past disqualification actions show little, if any, evidence that an investigator disqualified from receiving one type of test article later conducted a clinical investigation studying a different type of test article. Nonetheless, based in part on GAO recommendations, we find that explicit regulatory language is needed to ensure that a disqualified investigator cannot conduct a clinical investigation with any FDA-regulated test article.

FDA would realize cost savings if there are future disqualification matters involving clinical investigators who are already disqualified and then conduct additional research in another FDA-regulated product area. There would be no need to bring a second action because the first disqualification would prohibit research by the disqualified investigator with any test article. We cannot estimate the amount of savings, but the legal costs avoided would be considerable for each additional product area.

E. Benefit

The proposed rule would help ensure that disqualified investigators cannot receive any FDA-regulated article, *i.e.,* disqualified investigators will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products. Explicitly expanding a disqualified investigator's ineligibility to receive any FDA-regulated test article would help to reduce the risk of additional violations in other FDA-regulated investigations and would help to ensure the integrity of clinical trial data. This action would help reduce the risk to human subjects who participate in FDA-regulated investigations. This proposed rule may also lead to improved public confidence in the clinical data supporting FDA decisions.

F. Alternatives

This proposed rule constitutes a minor change to existing regulations to ensure that FDA has the clear regulatory authority it needs to protect human subjects from exposure to research conducted by disqualified clinical investigators. We considered not expanding the scope of FDA's disqualification actions to include the ineligibility of a disqualified clinical investigator to receive any FDA-regulated test article. However, this would not meet the objective of helping to ensure the adequate protection of human subjects in clinical investigations or helping to ensure the reliability and integrity of the clinical trial data supporting FDA decision-making on product applications. There are no other viable alternatives.

G. Small Business Impact

The clinical research community, including clinical investigators, is composed of many large and small business entities. Clinical investigators may be associated with government and academic research institutions, contract research organizations, site-management organizations, or independent researchers. Investigational product research is often sponsored by FDA-regulated firms that seek to bring a new product to market.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities as previously discussed in this document. As stated above in this section of this document, we do not expect that the proposed rule would impose additional new costs. This proposed rule is expected to affect an average of about 1 to 2 clinical investigators per year. Affected investigators are disqualified because FDA has evidence that the clinical investigator repeatedly or deliberately violated FDA's regulations governing the proper conduct of clinical investigations. FDA is not imposing any additional requirements for the conduct of clinical investigations used to support marketing applications. It is clarifying its regulatory authority over disqualified investigators. Under this proposed rule a disqualified investigator would explicitly be ineligible to conduct any studies of FDA-regulated articles. We have little, if any, evidence that a disqualified investigator has conducted a clinical investigation studying a different type of test article.

For the reasons stated above, we propose to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act of 1995

This proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

The information collection in § 312.70 pertaining to the disqualification of a clinical investigator and an investigator's opportunity to respond to FDA is approved under the investigational new drug regulations, OMB control number 0910–0014; expiration date August 31, 2011.[6] The notification of IRB(s) in proposed § 312.70 is approved under OMB control number 0910–0130—Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards (IRBs); expiration date December 31, 2010 (renewal pending at OMB).[7] The information collection in § 511.1(c) pertaining to the disqualification of a clinical investigator and an investigator's opportunity to respond to FDA is approved under the new animal drugs for investigational use regulations OMB control number 0910–0117; expiration date August 31, 2011.[8] The information collection in § 812.119 pertaining to the disqualification of a clinical investigator and an investigator's opportunity to respond to FDA is approved under the investigational device exemptions reports and records in part 812, OMB control number 0910–0078; expiration date February 28, 2013.[9] In addition, INDs and new drug applications are approved under OMB control number 0910–0416; animal drug applications, 21 CFR part 514 are approved under OMB control number 0910–0032; premarket notification submissions, 510(k), subpart E are approved under OMB control number 0910–0120; and premarket approvals of medical devices, part 814, are approved under OMB control number 0910–0231.

X. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

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[6] See *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200905-0910-005* (accessed on February 4, 2011).

[7] See *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200711-0910-003* (accessed on February 4, 2011).

[8] See *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200806-0910-005* (accessed on February 4, 2011).

[9] See *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-0910-010* (accessed on February 4, 2011).

XI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

The following reference has been placed on display in the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. We have verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

1. GAO Report to Congressional Requesters—Oversight of Clinical Investigators, Action Needed to Improve Timeliness and Enhance Scope of FDA's Debarment and Disqualification Processes for Medical Product Investigators; GAO–09–807. See *http://www.gao.gov/new.items/d09807.pdf* (accessed on February 4, 2011).

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 511

Animal drugs, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 16, 312, 511, and 812 be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by adding in numerical sequence entries for "§ 58.204(b)", "§ 812.119", and "§ 822.7(a)(3)" and by revising the entries for "§ 312.70" and "§ 511.1(c)(1)" to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 58.204(b), relating to disqualifying a testing facility.

* * * * *

§ 312.70, relating to whether an investigator is eligible to receive test articles under part 312 of this chapter and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

* * * * *

§ 511.1(c)(1), relating to whether an investigator is eligible to receive test articles under part 511 of this chapter and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

* * * * *

§ 812.119, relating to whether an investigator is eligible to receive test articles under part 812 of this chapter and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

* * * * *

§ 822.7(a)(3), relating to an order to conduct postmarket surveillance of a medical device under section 522 of the act.

* * * * *

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

3. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

4. Section 312.70 is revised to read as follows:

§ 312.70 Disqualification of a clinical investigator.

(a) If FDA has information indicating that an investigator (including a sponsor-investigator) has repeatedly or deliberately failed to comply with the requirements of this part, part 50 of this chapter, or part 56 of this chapter, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research will furnish the investigator written notice of the matter complained of and offer the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, in an informal conference. If an explanation is offered and accepted by the applicable Center, the Center will discontinue pursuit of the disqualification proceeding. If an explanation is offered but not accepted by the applicable Center, the investigator will be given an opportunity for a regulatory hearing under part 16 of this chapter on the question of whether the investigator is eligible to receive test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA.

(b) After evaluating all available information, including any explanation presented by the investigator, if the Commissioner determines that the investigator has repeatedly or deliberately failed to comply with the requirements of this part, part 50 of this chapter, or part 56 of this chapter, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Commissioner will notify the investigator, the sponsor of any investigation in which the investigator has been named as a participant, and the reviewing institutional review board (IRB(s)) that the investigator is not eligible to receive test articles under this part. The notification to the investigator, sponsor, and IRB(s) will provide a statement of the basis for such

determination. The notification also will explain that an investigator determined to be ineligible to receive test articles under this part will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

(c) Each application or submission to FDA under the provisions of this chapter and containing data reported by an investigator who has been determined to be ineligible to receive FDA-regulated test articles will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of any investigation or essential to the approval of any marketing application, or essential to the continued marketing of an FDA-regulated product.

(d) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the data remaining are inadequate to support a conclusion that it is reasonably safe to continue the investigation, the Commissioner will notify the sponsor who shall have an opportunity for a regulatory hearing under part 16 of this chapter. If a danger to the public health exists, however, the Commissioner shall terminate the IND immediately and notify the sponsor and the reviewing IRB(s) of the termination. In such case, the sponsor shall have an opportunity for a regulatory hearing before FDA under part 16 of this chapter on the question of whether the IND should be reinstated. The determination that an investigation may not be considered in support of a research or marketing application or a notification or petition submission does not, however, relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

(e) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the continued approval of the product for which the data were submitted cannot be justified, the Commissioner will proceed to withdraw approval of the product in accordance with the applicable provisions of the relevant statutes.

(f) An investigator who has been determined to be ineligible under paragraph (b) of this section may be reinstated as eligible when the Commissioner determines that the investigator has presented adequate assurances that the investigator will employ all test articles, and will conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, solely in compliance with the applicable provisions of this chapter.

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

5. The authority citation for 21 CFR part 511 continues to read as follows:

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

6. Section 511.1 is amended by revising paragraph (c) to read as follows:

§ 511.1 New animal drugs for investigational use exempt from section 512(a) of the act.

* * * * *

(c) *Disqualification of a clinical investigator.* (1) If FDA has information indicating that an investigator (including a sponsor-investigator) has repeatedly or deliberately failed to comply with the conditions of these exempting regulations or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Center for Veterinary Medicine will furnish the investigator written notice of the matter complained of and offer the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, in an informal conference. If an explanation is offered and accepted by the Center for Veterinary Medicine, the Center will discontinue pursuit of the disqualification proceeding. If an explanation is offered but not accepted by the Center for Veterinary Medicine, the investigator will be given an opportunity for a regulatory hearing under part 16 of this chapter on the question of whether the investigator is eligible to receive test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA.

(2) After evaluating all available information, including any explanation presented by the investigator, if the Commissioner determines that the investigator has repeatedly or deliberately failed to comply with the conditions of the exempting regulations in this subchapter, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Commissioner will notify the investigator and the sponsor of any investigation in which the investigator has been named as a participant that the investigator is not eligible to receive test articles under this part. The notification to the investigator and sponsor will provide a statement of the basis for such determination. The notification also will explain that an investigator determined to be ineligible to receive test articles under this part will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

(3) Each application or submission to FDA under the provisions of this chapter and containing data reported by an investigator who has been determined to be ineligible to receive FDA-regulated test articles will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of any investigation or essential to the approval of any marketing application, or essential to the continued marketing of an FDA-regulated product.

(4) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the data remaining are inadequate to support a conclusion that it is reasonably safe to continue the investigation, the Commissioner will notify the sponsor who shall have an opportunity for a regulatory hearing under part 16 of this chapter. If a danger to the public health exists, however, the Commissioner shall terminate the exemption immediately and notify the sponsor of the termination. In such case, the sponsor shall have an opportunity for a regulatory hearing before FDA under part 16 of this chapter on the question of whether the exemption should be reinstated. The determination that an investigation may not be considered in support of a research or marketing application or a notification or petition submission does not, however, relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

(5) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the continued approval of the product for which the data were submitted cannot be justified, the Commissioner will proceed to withdraw approval of the product in accordance with the applicable provisions of the relevant statutes.

(6) An investigator who has been determined to be ineligible under paragraph (c)(2) of this section may be reinstated as eligible when the Commissioner determines that the investigator has presented adequate assurances that the investigator will employ all test articles, and will conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, solely in compliance with the applicable provisions of this chapter.

* * * * *

7. Part 511 is amended by adding § 511.3 to read as follows:

§ 511.3 Definitions.

As used in this part:

Contract research organization means a person that assumes, as an independent contractor with the sponsor, one or more of the obligations of a sponsor, *e.g.,* design of a protocol, selection or monitoring of investigations, evaluation of reports, and preparation of materials to be submitted to FDA.

Investigator means an individual who actually conducts a clinical investigation (*i.e.,* under whose immediate direction the drug is administered or dispensed to a subject). In the event an investigation is conducted by a team of individuals, the investigator is the responsible leader of the team. "Subinvestigator" includes any other individual member of that team.

Sponsor means a person who takes responsibility for and initiates a clinical investigation. The sponsor may be an individual or pharmaceutical company, governmental agency, academic institution, private organization, or other organization. The sponsor does not actually conduct the investigation unless the sponsor is a sponsor-investigator. A person other than an individual that uses one or more of its own employees to conduct an investigation that it has initiated is a sponsor, not a sponsor-investigator, and the employees are investigators.

Sponsor-investigator means an individual who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed. The term does not include any person other than an individual. The requirements applicable to a sponsor-investigator under this part include both those applicable to an investigator and a sponsor.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

8. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

9. Section 812.119 is revised to read as follows:

§ 812.119 Disqualification of a clinical investigator.

(a) If FDA has information indicating that an investigator (including a sponsor-investigator) has repeatedly or deliberately failed to comply with the requirements of this part, part 50 of this chapter, or part 56 of this chapter, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Center for Devices and Radiological Health, the Center for Biologics Evaluation and Research, or the Center for Drug Evaluation and Research will furnish the investigator written notice of the matter complained of and offer the investigator an opportunity to explain the matter in writing, or, at the option of the investigator, in an informal conference. If an explanation is offered and accepted by the applicable Center, the Center will discontinue pursuit of the disqualification proceeding. If an explanation is offered but not accepted by the applicable Center, the investigator will be given an opportunity for a regulatory hearing under part 16 of this chapter on the question of whether the investigator is eligible to receive test articles under this part and eligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA.

(b) After evaluating all available information, including any explanation presented by the investigator, if the Commissioner determines that the investigator has repeatedly or deliberately failed to comply with the requirements of this part, part 50 of this chapter, or part 56 of this chapter, or has repeatedly or deliberately submitted to FDA or to the sponsor false information in any required report, the Commissioner will notify the investigator, the sponsor of any investigation in which the investigator has been named as a participant, and the reviewing IRB(s) that the investigator is not eligible to receive test articles under this part. The notification to the investigator, sponsor, and IRB(s) will provide a statement of the basis for such determination. The notification also will explain that an investigator determined to be ineligible to receive test articles under this part will be ineligible to conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, including drugs, biologics, devices, new animal drugs, foods, including dietary supplements, that bear a nutrient content claim or a health claim, infant formulas, food and color additives, and tobacco products.

(c) Each application or submission to FDA under the provisions of this chapter and containing data reported by an investigator who has been determined to be ineligible to receive FDA-regulated test articles will be examined to determine whether the investigator has submitted unreliable data that are essential to the continuation of any investigation or essential to the clearance or approval of any marketing application, or essential to the continued marketing of an FDA-regulated product.

(d) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the data remaining are inadequate to support a conclusion that it is reasonably safe to continue the investigation, the Commissioner will notify the sponsor who shall have an opportunity for a regulatory hearing under part 16 of this chapter. If a danger to the public health exists, however, the Commissioner shall terminate the IDE immediately and notify the sponsor and the reviewing IRB(s) of the termination. In such case, the sponsor shall have an opportunity for a regulatory hearing before FDA under part 16 of this chapter on the question of whether the IDE should be reinstated. The determination that an investigation may not be considered in support of a research or marketing application or a notification or petition submission does not, however, relieve the sponsor of any obligation under any other applicable regulation to submit to FDA the results of the investigation.

(e) If the Commissioner determines, after the unreliable data submitted by the investigator are eliminated from consideration, that the continued clearance or approval of the product for which the data were submitted cannot be justified, the Commissioner will proceed to rescind clearance or withdraw approval of the product in accordance with the applicable provisions of the relevant statutes.

(f) An investigator who has been determined to be ineligible under paragraph (b) of this section may be reinstated as eligible when the Commissioner determines that the

investigator has presented adequate assurances that the investigator will employ all test articles, and will conduct any clinical investigation that supports an application for a research or marketing permit for products regulated by FDA, solely in compliance with the applicable provisions of this chapter.

Dated: April 7, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–8786 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2011–N–0251]

FDA Food Safety Modernization Act: Focus on Preventive Controls for Facilities; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "FDA Food Safety Modernization Act: Focus on Preventive Controls for Facilities." The purpose of the public meeting is to provide interested persons an opportunity to discuss implementation of the preventive controls for facilities provisions of the recently enacted FDA Food Safety Modernization Act (FSMA). FDA is seeking information on preventive controls used by facilities to identify and address hazards associated with specific types of food and specific processes. The public will have an opportunity to provide information and share views that will inform the development of guidance and regulations on preventive controls for food facilities that manufacture, process, pack or hold human food or animal food and feed (including pet food).

DATES: See "How to Participate in the Meeting" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patricia M. Kuntze, Office of External Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5322, Silver Spring, MD 20993, 301–796–8641, *Patricia.Kuntze@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FSMA (Pub. L. 111–353) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation for a modernized, prevention-based food safety system and gives FDA for the first time a legislative mandate to require comprehensive, science-based preventive controls across the food supply.

In particular, section 103 of FSMA requires the owner, operator, or agent in charge of a facility that is required to register under section 415 of the FD&C Act (21 U.S.C. 350d) to take certain preventive actions, including to evaluate the hazards that could affect food manufactured, processed, packed, or held by the facility, and to identify and implement preventive controls to significantly minimize or prevent the occurrence of such hazards. FDA is required to develop regulations to establish science-based standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting their implementation.

In addition, FDA is required to issue guidance with respect to hazard analysis and preventive controls. Given the diversity of registered facilities and regulated foods, FDA will use the guidance to assist the food and feed industries in complying with the preventive controls regulations, when they are finalized. FDA will leverage, where appropriate, best practices for hazards and controls identified by industry for specific types of food and feed and specific methods in manufacturing, processing, packing, and holding food and feed. FDA is interested in making appropriate best practices publicly available. FDA is particularly interested in preventive control practices that are applicable and practical for small and very small businesses to implement.

II. Purpose and Format of the Meeting

If you wish to attend and/or present at the meeting scheduled for April 20, 2011, please register by e-mail at *http://www.blsmeetings.net/FDAPreventiveControls* by April 15, 2011. FDA is holding the public meeting on section 103 of FSMA to receive input from the public to inform the development of the regulations and guidance identified previously in this document. FDA will also consider input it has received previously through its engagement of stakeholders as part of the process to examine and update current good manufacturing practice requirements and to develop an animal feed safety system.

In general, the meeting format will include introductory presentations by FDA. Listening to our stakeholders is the primary purpose of this meeting. In order to meet this goal, FDA will provide multiple opportunities for individuals to actively express their views by making presentations at the meeting, participating in a total of three 75-minute break-out sessions on the provisions discussed at the meeting, and submitting written comments to the docket within 30 days after this meeting. (Participants can select up to three of the following five break-out sessions: Preventive Controls Guidance, On-Farm Manufacturing and Small Business, Product Testing and Environmental Monitoring, Training and Technical Assistance, and Preventive Controls and the Relationship to cGMPs.) There will be an interactive Webcast; see section III of this document, "How to Participate in the Meeting." In order to provide Webcast participants with information before and after the meeting, we request attendees provide their name, their affiliation, and email when registering.

III. How To Participate in the Meeting

Stakeholders will have an opportunity to provide oral comments. Due to limited space and time, FDA encourages all persons who wish to attend the meeting, including those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting, to register in advance and to provide the specific topic or issue to be addressed and the approximate desired length of their presentation. Depending on the number of requests for such oral presentations, there may be a need to limit the time of each oral presentation (*e.g.,* 3 minutes each). If time permits, individuals or organizations that did not register in advance may be granted the opportunity for such an oral presentation. FDA would like to maximize the number of stakeholders who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their views at the meeting. FDA anticipates that there will be several opportunities to speak in break-out sessions and an interactive Webcast will also be available for stakeholders who are not onsite.

FDA encourages persons and groups who have similar interests to consolidate their information for presentation through a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available and the

approximate time their presentation is scheduled to begin.

There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Onsite registration will be accepted after all preregistered attendees are seated.

Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND SUBMITTING COMMENTS

	Date	Electronic address	Address (non-electronic)	Other information
Date of Public Meeting	April 20, 2011, 9 a.m. to 5:30 p.m.		FDA White Oak Campus, The Great Room, Bldg. 31, rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993.	Registration begins at 7:30 a.m.
Webcast	April 20, 2011, 9 a.m. to 5:30 p.m.	*https://collaboration.fda.gov/preventivecontrols/.*		• If you have never attended a ConnectPRO meeting: Test your connection: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* Get a quick overview: *http://www.adobe.comgo/connectpro_overview.*[1] • The webcast will provide closed captioning.
Advance Registration	By April 15, 2011	*http://www.blsmeetings.net/FDAPreventiveControls.*		Registration to attend the meeting will also be accepted onsite on the day of the meeting, as space permits. Registration information may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Request special accommodations due to disability.	By April 15, 2011		Patricia M. Kuntze, 301–796–8641, email: *Patricia.Kuntze@fda.hhs.gov.*	
Make a request for oral presentation.	By April 15, 2011	*http://www.blsmeetings.net/FDAPreventiveControls.*		Requests made on the day of the meeting to make an oral presentation may be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Provide a brief description of the oral presentation and any written material for the presentation.	By April 15, 2011	*http://www.blsmeetings.net/FDAPreventiveControls.*		Written material associated with an oral presentation should be submitted in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) and may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Submit electronic or written comments.	Submit comments by May 20, 2011.	Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.	*FAX:* 301–827–6870. *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.	All comments must include the Agency name and the docket number in brackets in the heading of this document. All received comments may be posted without change to *http://www.regulations.gov,* including any personal information provided. FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, see the "Comments" heading of the SUPPLEMENTARY INFORMATION section of this document.

[1] Adobe, the Adobe logo, Acrobat and Acrobat Connect are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

IV. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (see table 1 of this document) either electronic or written comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: April 7, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–8785 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 124

[Public Notice: 7415]

RIN 1400–AC80

International Traffic in Arms Regulations: Defense Services

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to update the policy regarding defense services, to clarify the scope of activities that are considered a defense service, and to provide definitions of "Organizational-Level Maintenance," "Intermediate-Level Maintenance," and "Depot-Level Maintenance," and to make other conforming changes.

DATES: The Department of State will accept comments on this proposed rule until June 13, 2011.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, "Regulatory Changes—Defense Services."
- *Mail:* PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Changes—Defense Services, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- *Internet:* View this notice by searching for its RIN on the U.S. Government regulations Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–1282 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Changes—Defense Services.

SUPPLEMENTARY INFORMATION: As part of the President's Export Control Reform effort, the Department of State is proposing to amend parts 120 and 124 of the ITAR to reflect new policy regarding coverage of defense services.

The Department reviewed the ITAR's treatment of defense services with a view to enhancing support to allies and friends, improving efficiency in licensing, and reducing unintended consequences. As a result, it was determined that the current definition of defense services in § 120.9 is overly broad, capturing certain forms of assistance or services that do not warrant ITAR control. The proposed change in subpart (a) of the definition of "defense services" narrows the focus of services to furnishing of assistance (including training) using "other than public domain data", integrating items into defense articles, or training of foreign forces in the employment of defense articles. Consequently, services based solely upon the use of public domain data would not constitute defense services under this part of the definition and, therefore, would not require a license, technical assistance agreement, or manufacturing license agreement to provide to a foreign person. The proposed new definition of defense service also includes a new provision that would control the "integration" of items, whether controlled by the U.S. Munitions List (USML) or the Commerce Control List (CCL), into USML controlled defense articles even if ITAR-controlled "technical data" is not provided to a foreign person during the provision of such services. Additionally, the new rule specifies that training for foreign "units or forces" will be considered a defense service only if the training involves the employment of a defense article, regardless of whether technical data is involved. This operational definition improves upon the current open-ended wording of § 120.9(a)(3), which covers "military training of foreign units and forces." Also, significantly, the proposed new rule specifies in subpart (b) examples of activities that do not constitute defense services. For example, the proposed new rule would prevent the anomalous situation where foreign companies are reluctant to hire U.S. citizens for fear that such employment alone constitutes a defense service, even where no technical data would be transferred to the employer.

A new § 120.38 is proposed to provide definitions for "Organizational-Level Maintenance" (or basic level maintenance), "Intermediate-Level Maintenance," and "Depot-Level Maintenance," terms used in the proposed revision of § 120.9.

The Department proposes to make several other conforming changes to the ITAR. The proposed rule modifies § 124.1(a), which describes the approval requirements of manufacturing license agreements and technical assistance agreements. The proposed change removes the requirement in § 124.1(a) to seek the Directorate of Defense Trade Controls' approval if the defense service that is being rendered uses public domain data or data otherwise exempt from ITAR licensing requirements. This change would be made to conform with the revisions made to § 120.9. The Department proposes to delete § 124.2(a), as this requirement is no longer applicable as a result of proposed changes to § 120.9. Conforming changes are to be made to § 124.2(c) to reflect the proposed deletion of § 124.2(a).

This proposed rule was presented to the Defense Trade Advisory Group (DTAG), a Department of State advisory committee, for purposes of comment and evaluation. The DTAG commented favorably on most aspects of this proposed rule, but also recommended certain changes. Having thoroughly reviewed and evaluated the comments and the recommended changes, the Department has determined that it will proceed with the proposed rule per the Department's evaluation of the written comments and recommendations as follows:

The DTAG recommended the qualifier "U.S. origin" be added before "technical data" in the proposed § 120.9. We note the current definition of technical data in § 120.10 is not restricted to U.S. origin data. We do not believe that a departure from the existing definition of technical data for the purposes of defense services is prudent. However, the confusion caused by the term "technical data" lead to the rewrite of the definition to require the use of data "other than public domain data" as the regulatory standard. This rewrite provides clarity and an objective standard that can be easily applied. Using data that is "other than public domain data," including proprietary data or "technology" "subject to the Export Administration Regulations," to provide assistance would constitute a defense service under this change. The DTAG also recommended adding definitions of "intermediate or depot level repair or maintenance." We agreed with the recommendation and added such definitions in a new § 120.38. The DTAG agreed with the addition of "integration" but recommended that a definition of that term be added, especially to distinguish it from "installation." We declined to accept that recommendation, finding that integration has plain meaning in the context of the proposed rule. As used in the proposed definition of defense services, "installation" means the act of putting something in its pre-determined place and does not require changes or modifications to the item in which it is being installed (*e.g.,* installing a dashboard radio into a military vehicle where no changes or modifications to the vehicle are required; connecting wires and fastening the radio inside of the preexisting opening is the only assistance that is necessary). "Integration" means the systems engineering design process of uniting two or more things in order to form, coordinate, or blend into a functioning or unified whole, including introduction of software to enable proper operation of the device. This includes determining where to install something (*e.g.,* integration of a civil engine into a destroyer which requires changes or modifications to the destroyer in order for the civil engine to operate properly; not simply plug and play). The DTAG suggested that language in § 120.9(a)(3) be changed from "whether or not use of technical data is involved" to "whether or not the transfer of technical data is involved." We adopted that recommendation.

The DTAG suggested we add definitions of "irregular forces" and "tactical employment." We did not agree with the need to define the first term, believing that the meaning should be clear in the context of the proposed rule. Subsequent to the DTAG's evaluation of this proposed rule, the word "tactical" was removed from before the word "employment" in § 120.9(a)(3). In § 120.9(a)(3), the DTAG recommended we change "conducting direct combat operations or providing intelligence services for a foreign person" to "conducting direct combat operations of a military function for or providing military intelligence services to a foreign person." We do not believe that adding the words "military function" or "military" are necessary or add clarity. The clarification in subsection § 120.9 (b)(5) suffices.

The DTAG advised that "U.S. citizen" in § 120.9 (b)(2) be changed to "U.S. person." We did not concur with that recommendation because the proposed rule was intended to cover individuals, not business entities such as corporations. The use of "U.S. persons" would have included the latter. The DTAG recommended we add the words "or installed" after the word "integrated" in § 120.9 (b)(3). We accepted the inclusion of those words, but subsequently changed the word "integrated" to "incorporated." The DTAG also suggested adding "physical security or personal protective training" to § 120.9 (b)(4). We accepted that change.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of the APA, the Department is publishing this proposed rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department of State does not consider this proposed rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866.

Executive Order 13563

The Department of State has considered this rule in light of Section 1(b) of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed this proposed amendment in light of sections 3(a) and 3(b)(2) of Executive

Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this proposed amendment will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Section 5 of Executive Order 13175 does not apply to this proposed amendment.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 120 and 124

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120 and 124 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 120.9 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3), and adding new paragraphs (a)(4) and (b) to read as follows:

§ 120.9 Defense service.

(a) * * *

(1) The furnishing of assistance (including training) using other than public domain data to foreign persons (see § 120.16 of this subchapter), whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, intermediate or depot level repair or maintenance (see § 120.38 of this subchapter), modification, demilitarization, destruction, or processing of defense articles (see § 120.6 of this subchapter); or

(2) The furnishing of assistance to foreign persons, whether in the United States or abroad, for the integration of any item controlled on the U.S. Munitions List (USML) (see § 121.1 of this subchapter) or the Commerce Control List (see 15 CFR part 774) into an end item (see § 121.8(a) of this subchapter) or component (see § 121.8(b) of this subchapter) that is controlled as a defense article on the USML, regardless of the origin; or

(3) Training or providing advice to foreign units and forces, regular and irregular, regardless of whether technical data is transferred to a foreign person, including formal or informal instruction of foreign persons in the United States or abroad by any means including classroom or correspondence instruction, conduct or evaluation of training and training exercises, in the employment of defense articles; or

(4) Conducting direct combat operations for or providing intelligence services to a foreign person directly related to a defense article.

(b) The following is not a *defense service:*

(1) Training in the basic operation (functional level) or basic maintenance (see § 120.38) of a defense article; or

(2) Mere employment of a U.S. citizen by a foreign person; or

(3) Testing, repair, or maintenance of an item "subject to the Export Administration Regulations" (see 15 CFR 734.2) administered by the Department of Commerce, Bureau of Industry and Security, that has been incorporated or installed into a defense article; or

(4) Providing law enforcement, physical security or personal protective training, advice, or services to or for a foreign person (see § 120.16 of this subchapter), using only public domain data; or

(5) Providing assistance (including training) in medical, logistical (other than maintenance), or other administrative support services to or for a foreign person.

3. Sections 120.33 through 120.37 are added and reserved, and a new § 120.38 is to be added to read as follows:

§ 120.33–120.37 [Reserved]

§ 120.38 Maintenance levels.

(a) *Organizational-level maintenance* (or basic level maintenance) is the first level of maintenance performed by an end-user unit or organization "on-equipment" (directly on the defense article or support equipment) assigned to the inventory of the end-user unit or organization. Its phases consist of repair, inspecting, servicing, or calibration, testing, lubricating and adjusting equipment, as well as replacing minor parts, components, assemblies and line-replaceable spares or units.

(b) *Intermediate-level maintenance* is second-level maintenance performed "off-equipment" (on removed components, parts, or equipment) by designated maintenance shops or centers, tenders, and mobile teams in direct support of end-users units or organizations. Its phases consist of: Calibration, repair, or testing and replacement of damaged or unserviceable parts, components, or assemblies.

(c) *Depot-level maintenance* is third-level maintenance performed on-or off-equipment at or by a major repair facility, shipyard, or field team with extensive equipment, and personnel of higher technical skill in direct support of end-user units or organizations. It consists of providing evaluation or repair beyond unit or organizations capability. Its phases include: Inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components; and excluding any modification, enhancement upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

4. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

5. Section 124.1(a) is revised to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *Approval.* The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. This requirement also applies to the training of any foreign military forces, regular

and irregular, in the employment of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

* * * * *

6. In § 124.2, paragraph (a) is removed and reserved and paragraph (c) introductory text is revised to read as follows:

§ 124.2 Exemptions for training and military service.

(a) [Reserved]

* * * * *

(c) For NATO countries, Australia, Japan and Sweden, in addition to the basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including the export of supporting technical data, when the following criteria can be met:

* * * * *

Dated: April 5, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–8998 Filed 4–12–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–154159–09]

RIN 1545–BJ14

Guidance Under Section 108(a) Concerning the Exclusion of Section 61(a)(12) Discharge of Indebtedness Income of a Grantor Trust or a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exclusion from gross income under section 108(a) of discharge of indebtedness income of a grantor trust or an entity that is disregarded as an entity separate from its owner. The proposed regulations provide rules regarding the term "taxpayer" for purposes of applying section 108 to discharge of indebtedness income of a grantor trust or a disregarded entity. The proposed regulations affect grantor trusts, disregarded entities, and their owners.

DATES: Written or electronic comments and requests for a public hearing must be received by July 12, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–154159–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–154159–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC; or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–154159–09).

FOR FURTHER INFORMATION CONTACT: Bryan A. Rimmke or Benjamin H. Weaver, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code (the Code) provides that income from the discharge of indebtedness is includable in gross income. However, such income may be excludable from gross income under section 108 in certain circumstances. Section 108(a)(1)(A) and (B) excludes from gross income any amount that would be includible in gross income by reason of the discharge of indebtedness of the taxpayer if the discharge occurs in a Title 11 case or to the extent the taxpayer is insolvent when the discharge occurs. Section 108(d)(1) through (3) provides the meaning of the terms "indebtedness of the taxpayer," "Title 11 case," and "insolvent," for purposes of applying section 108, and each definition uses the term "taxpayer." Section 7701(a)(14) defines a *taxpayer* as any person subject to any internal revenue tax.

Several types of disregarded entities exist under the Code and regulations. For instance, § 301.7701–2(a) of the Procedure and Administration Regulations provides that the term *business entity* includes an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3; an example of a disregarded entity under this provision is a domestic single member limited liability company that does not elect to be classified as a corporation for Federal income tax purposes. Additionally, some disregarded entities are created by statute; examples of statutory disregarded entities include a corporation that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

The activities of an entity that is a disregarded entity are treated in the same manner as a sole proprietorship, branch, or division of the owner (except for certain employment and excise tax rules). Accordingly, for Federal income tax purposes, all assets, liabilities, and items of income, deduction, and credit of a disregarded entity are treated as assets, liabilities, and such items (as the case may be) of the owner of the disregarded entity.

A *grantor trust* is any portion of a trust that is treated (under subpart E of part I of subchapter J of chapter 1) as being owned by the grantor or another person. In the case of any grantor trust, items of income, deductions, and credits attributable to the trust are includable in computing the taxable income and credits of the owner.

Explanation of Provisions

The proposed regulations provide that, for purposes of applying section 108(a)(1)(A) and (B) to discharge of indebtedness income of a grantor trust or a disregarded entity, the term *taxpayer,* as used in section 108(a)(1) and (d)(1) through (3), refers to the owner(s) of the grantor trust or disregarded entity. The proposed regulations further provide that grantor trusts and disregarded entities themselves will not be considered owners for this purpose. Finally, the proposed regulations provide that, in the case of a partnership, the owner rules apply at the partner level to the partners of the partnership to whom the discharge of indebtedness income is allocable. Thus, for example, if a partnership holds an interest in a grantor trust or disregarded entity, the applicability of section 108(a)(1)(A) and (B) to discharge of indebtedness income of the grantor trust or disregarded entity is tested by looking to the partners to whom the income is allocable. If any partner is itself a grantor trust or disregarded entity, the applicability of section 108(a)(1)(A) and (B) is determined by looking through such grantor trust or disregarded entity to the ultimate owner(s) of such partner.

Some taxpayers have taken the position that the insolvency exception is available to the extent a grantor trust or disregarded entity is insolvent, even if its owner is not. The IRS and the Treasury Department do not believe this

is an appropriate application of the relevant statutory provisions. The proposed regulations clarify that, subject to the special rule for partnerships under section 108(d)(6), the insolvency exception is available only to the extent the owner is insolvent, as owner is determined as described in this preamble.

Some taxpayers have taken the position that the bankruptcy exception is available if a grantor trust or disregarded entity is under the jurisdiction of a bankruptcy court, even if its owner is not. These taxpayers may argue that because, for Federal income tax purposes, the disregarded entity is disregarded and the "taxpayer" is the owner of the disregarded entity's assets and liabilities, the taxpayer is properly seen as being subject to the bankruptcy court's jurisdiction. Under the proposed regulations, it is insufficient for the grantor trust or disregarded entity to be subject to the bankruptcy court's jurisdiction. The proposed regulations clarify that, subject to the special rule for partnerships under section 108(d)(6), the bankruptcy exception is available only if the owner of the grantor trust or disregarded entity is subject to the bankruptcy court's jurisdiction, as owner is determined as described in this preamble.

Proposed Effective/Applicability Date

These regulations are proposed to apply to discharge of indebtedness income occurring on or after the date final regulations are published in the **Federal Register**. No inference is intended that the provisions set forth in these proposed regulations are not current law.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Bryan A. Rimmke and Benjamin H. Weaver, Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.108–9 is added to read as follows:

§ 1.108–9 Application of insolvency and bankruptcy provisions of section 108 to disregarded entities and grantor trusts.

(a) *General rule.* For purposes of applying section 108(a)(1)(A) and (B) to discharge of indebtedness income of a grantor trust or disregarded entity, neither the grantor trust nor the disregarded entity shall be considered to be the "taxpayer," as that term is used in section 108(a)(1) and (d)(1) through (3). Rather, for purposes of section 108(a)(1) and (d)(1) through (3) and subject to section 108(d)(6), the owner of the grantor trust or disregarded entity is the taxpayer. If indebtedness of a grantor trust or disregarded entity is discharged in a Title 11 case, section 108(a)(1)(A) will apply only to an owner of the grantor trust or disregarded entity that is under the jurisdiction of the court in a Title 11 case. If the grantor trust or disregarded entity is under the jurisdiction of the court in a Title 11 case, but the owner of the grantor trust or disregarded entity is not, section 108(a)(1)(A) will not apply to the discharge of indebtedness income. If indebtedness of a grantor trust or disregarded entity is otherwise discharged, section 108(a)(1)(B) will apply only to the extent the owner of the grantor trust or disregarded entity is insolvent. If the grantor trust or disregarded entity is insolvent, but the owner of the grantor trust or disregarded entity is not, section 108(a)(1)(B) will not apply to the discharge of indebtedness income.

(b) *Application to partnerships.* Under section 108(d)(6), in the case of a partnership, section 108(a)(1)(A) and (B) applies at the partner level. Accordingly, in the case of a partnership, paragraph (a) of this section applies to the partners of such partnership to whom the discharge of indebtedness income is allocable.

(c) *Definitions*—(1) *Disregarded entities.* For purposes of this section, a *disregarded entity* is an entity that is disregarded as an entity separate from its owner for Federal income tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal income tax purposes, a corporation that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(2) *Grantor trust.* For purposes of this section, a *grantor trust* is any portion of a trust that is treated under subpart E of part I of subchapter J of chapter 1 as being owned by the grantor or another person.

(3) *Owner.* Notwithstanding any other provision of this section to the contrary, neither a grantor trust nor a disregarded entity shall be considered an owner for purposes of this section.

(d) *Effective/applicability date.* The rules of this section are proposed to apply to discharge of indebtedness income occurring on or after the date final regulations are published in the **Federal Register.**

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–8758 Filed 4–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146097–09]

RIN 1545–BJ01

Guidance on Reporting Interest Paid to Nonresident Aliens; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a rescheduled notice of public hearing on a notice of proposed rulemaking (REG–146097–09) that was published in the **Federal Register** on Tuesday, January 18, 2011 (76 FR 2852) and Friday, January 7, 2011 (76 FR 1105) providing guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals.

DATES: The public hearing is being rescheduled on Monday, April 25, 2011, at 10 a.m.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–146097–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146097–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Holman at (202) 622–3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–146097–09) that was published in the **Federal Register** on Friday, January 7, 2011 (76 FR 1105).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Friday, April 8, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW. entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

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

[FR Doc. 2011–8771 Filed 4–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0103]

RIN 1625–AA08

Special Local Regulation; Extreme Sailing Series Boston; Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation in Boston Harbor, Boston, Massachusetts, within the Captain of the Port (COTP) Boston Zone. This special local regulation is necessary to provide for the safety of life on navigable waters during the Extreme Sailing Series Boston regatta. The special local regulation will temporarily restrict vessel traffic in a portion of Boston Harbor, and prohibit vessels not participating in the Extreme Sailing Series event from entering the designated race area.

DATES: Comments and related material must be received by the Coast Guard on or before May 31, 2011.

Requests for public meetings must be received by the Coast Guard on or before April 20, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0103 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail MST1 David Labadie of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–3010, e-mail *David.J.Labadie@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0103), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a

comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0103" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0103" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, on or before April 20, 2011, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Petty Officer David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1233, which authorizes the Coast Guard to define Special Local Regulations.

This proposed rule is necessary to ensure the safety of vessels and spectators from the hazards associated with competitive sailing regattas. Without the proposed rule, the combination of a large number of recreational vessels due to spectators, sailboats traveling at high speeds on the race course, and large numbers of spectators on the adjacent Fan Pier in close proximity to the water and in a small area of water, could easily result in serious injuries or fatalities. Establishing a special local regulation for the event will help ensure the safety of persons and property and minimize the associated risks by controlling vessel traffic and movement.

Discussion of Proposed Rule

This proposed temporary special local regulation is necessary to ensure the safety of vessels, participants, and the public during the Extreme Sailing Series Boston regatta. The event will take place over the course of five days in Boston Harbor in the vicinity of Fan Pier. There will be two regulated areas associated with this event and they will be enforced immediately before, during, and after the regatta, from June 30th through July 4th, 2011, from 1 p.m. to 6 p.m. daily.

The COTP will inform the public about the details of the regulated areas using a variety of means, including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the COTP Boston or the designated on-scene representative. Specific instructions for entering into, transiting through, mooring or anchoring within the regulated areas, will be coordinated by the COTP Boston or the designated on-scene representative. The COTP or the designated on-scene representative may be contacted via VHF Channel 16 or by telephone at (617) 223–5750.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This rule may have some impact on the public, but these potential impacts will be minimal for the following reasons: (1) The rule will be in effect for five hours per day for five days; (2) persons and vessels may still enter, transit through, anchor in, or remain within the regulated area if they obtain permission from the COTP or the designated representative; and (3) advance notification will be made to the maritime community via broadcast notice to mariners and Local Notice to Mariners (LNM).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in or remain

within this regulated area during periods of enforcement.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a short duration and the race area within the Special Local Regulation area can be quickly collapsed at the discretion of the COTP, as necessary to allow for certain vessels greater than 65 feet in length to transit, provided the vessels have given a five-hour advance notice of their intended transit to the COTP. All other vessels not required to provide advance notification may transit within the Special Local Regulation area, with the exception of the race area, at all times while following the regulations in this proposed rule.

Additionally, the race organizers will coordinate with industry and the Boston Pilots to provide minimal interruption of commercial vessel traffic during the enforcement periods.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact PO David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add 33 CFR 100.35–T01–0103 to read as follows:

§ 100.35–T01–0103 Special Local Regulation; Extreme Sailing Series Boston; Boston Harbor; Boston, MA.

(a) *Regulated Area.*

(1) The following is designated as the special local regulation area: All waters of Boston Harbor near Boston, MA, surface to bottom, encompassed by an area starting at position: 42°21.3′ N; 071°03′ W, thence crossing the Fort Point Channel along Northern Avenue to position 42°21.3′ N; 071°02.9′ W, continuing Southeast along the Shoreline past Fan Pier to the end of the North Jetty at position 42°20.8′ N; 071°01.4′ W, continuing and crossing Boston Harbor to the opposite shore near Logan Airport at position 42°21.2′ N; 071°01′ W, continuing Northwest in a straight line along the shoreline to Pier One at position 42°21.9′ N; 071°02.5′ W, thence back across Boston Harbor to the point of origin at position 42°21.3′ N; 071°03′ W.

(2) The following area within the special local regulation area is specified as the race area:

All waters of Boston Harbor near Boston, MA, surface to bottom, encompassed by an area starting at position: 42°21.59′ N; 071°02.52′ W, thence to position 42°21.28′ N; 071°01.83′ W, thence to position 42°21.10′ N; 071°01.95′ W, thence to position 42°21.20′ N; 071°02.26′ W, thence to position 42°21.15′ N; 071°02.31′ W, thence to position 42°21.31′ N; 071°02.72′ W, thence to the point of origin at position 42°21.59′ N; 071°02.52′ W. This area will be clearly defined by floating buoys and will have the ability to be collapsed quickly to allow for safe passage of traffic if they have obtained permission from the COTP or the designated representative.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 100, to enter, transit through, anchor in, or remain within the special local regulation area is prohibited unless permission has been authorized by the Captain of the Port (COTP) Boston, or the designated on-scene representative. The "designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who is designated by the COTP to act on his behalf. The designated on-scene representative will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP or the designated on-scene representative may be contacted via VHF Channel 16 or by telephone at (617) 223–5750.

(1) The following restrictions apply to the special local regulation area identified in section (a)(1) of this regulation.

(i) Special Anchorage "A", which is a small vessel anchorage located near Rowes Wharf, is the only permitted area for anchoring. All other anchoring within this special local regulation area, including in Anchorage Area #1, is prohibited.

(ii) This special local regulation area is designed to restrict vessel traffic, including all non-motorized vessels, except as may be permitted by the COTP Boston or the designated on-scene representative.

(iii) Within this area all vessels will transit at the minimum speed necessary to maintain headway without creating a wake.

(iv) Due to the waterway area restriction and the expected increase in recreational vessels in the area, vessel operators of all vessels 65 feet in length or greater desiring to enter or operate within the special local regulation area shall contact the COTP or the designated on-scene representative at least five hours prior to the desired transit time to obtain permission to do so. Permission to enter the special local regulation area will be considered on a case-by-case basis at the discretion of the COTP and vessels may be escorted through the area if the COTP deems it necessary for safe transit. Failure to provide notification of entry at least five hours prior to transit may result in a denial of entry into the regulated area during the enforcement period. Vessel operators given permission to enter the area must comply with all directions given to them by the COTP or the designated on-scene representative.

(2) The following restrictions apply to the area identified as the race area in section (a)(2) of this regulation.

(i) This area is closed to all vessel traffic, with the exception of vessels involved directly with the event such as: sailboat race participants, event safety vessels, on-scene patrol and law enforcement vessels.

(c) *Effective Period:* This regulation is effective from 1 p.m. on June 30, 2011, to 6 p.m. on July 4, 2011. This regulation will be enforced daily from 1 p.m. until 6 p.m., June 30, 2011 through July 4, 2011.

Dated: March 30, 2011.

John N. Healey,

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

[FR Doc. 2011–8833 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0514; FRL–9294–6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Emissions of Organic Materials That Are Not Regulated by Volatile Organic Compound Reasonably Available Control Technology Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as part of Ohio's State Implementation Plan (SIP) under the Clean Air Act (CAA), a revised rule 3745–21–07, "Control of emissions of organic materials from stationary sources (*i.e.,* emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code)." This rule has been revised because the prior version of 3745–21–07, in Ohio's SIP, has inadequate compliance test methods and definitions. The most significant problem with the prior version is the definition of "photochemically reactive material," which is different than the definition of "volatile organic compounds" (VOC), upon which EPA's reasonably available control technology (RACT) regulations are based. The revised rule is approvable because it satisfies the requirements for RACT under the CAA.

DATES: Comments must be received on or before May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0514, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 692–2511.
- *Mail:* John Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John Mooney, Chief, Attainment Planning and Maintenance

Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0514. 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 instructions on submitting comments, go to Section I 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *Rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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

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

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

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

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. What action is EPA taking today and what is the purpose of this action?

EPA is proposing to approve into Ohio's SIP revised rule OAC 3745–21–07, "Control of emissions of organic materials from stationary sources (*i.e.,* emissions that are not regulated by rule 3745–21–09, 3745–21–12, 3745–21–14, 3745–21–15, 3745–21–16, or 3745–21–18 of the Administrative Code)." This rule was submitted by the Ohio Environmental Protection Agency (Ohio EPA) to EPA on April 7, 2008, but was not approvable at that time because both sheet molding compound (SMC) manufacturing operations and new or modified sources after February 18, 2008, were exempted from that version of the rule. However, on November 10, 2010, Ohio EPA submitted to EPA a new Rule 3745–21–25 "Control of VOC emissions from reinforced plastic composites production operations," which adequately regulates SMC manufacturing operations. Also, on October 25, 2010, Ohio EPA submitted a demonstration that the new 3745–21–07 does not violate the requirements of Section 110(l) of the CAA by not applying to new or modified sources after February 18, 2010. This demonstration is discussed in detail in the following section of this document.

III. What are the provisions of OAC 3745–21–07 and are they approvable?

As discussed below, this rule satisfies RACT requirements and is consistent with the CAA and EPA regulations. A general discussion of the main elements of OAC 3745–21–07 (Control of emissions of organic materials from stationary sources), all of which are approvable, follows:

3745–21–07(A) Applicability

(1)—Reserved.

(2)—Reserved.

(3)—This paragraph states that the rule applies to any source or operation, for which installation commenced prior to the effective date of this rule, and that is specifically identified in tables in paragraphs (K) to (N). This rule shall not apply to VOC emissions from any such source or operation regulated by the VOC rules 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14, 3745–21–15, 3745–21–15, 3745–21–16, or 3745–21–18. Although this rule does not apply to any sources for which installation commenced after the effective date of the rule (February 18, 2010) or will commence installation in the future, Ohio demonstrated that this will likely not result in an increase in emissions. More specifically, Ohio reviewed all permits issued between January 2008 and September 2010, and determined that, due to other control requirements, no permit would result in an increase in VOC emissions due to paragraphs (A)(3) and (A)(5). Furthermore, Ohio also demonstrated that sufficient reductions are available from oxides of nitrogen

(NO_X) RACT rule reductions to more than offset any potential future increase in emissions, thereby satisfying the requirements of section 110(l) of the CAA.

In December 2007, Ohio EPA promulgated rules in OAC chapter 3745–110, "NO_X RACT." These rules addressed the control of emissions of NO_X from stationary sources such as boilers, combustion turbines, and stationary internal combustion engines. The rules were submitted as part of the attainment strategy in the Cleveland-Akron-Lorain ozone moderate nonattainment area. On September 15, 2009, EPA redesignated the Cleveland-Akron-Lorain metropolitan area to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard. At the same time, EPA approved a waiver from the NO_X RACT requirements of section 182(f) of the CAA for this area. Ohio's NO_X RACT rules are, therefore, "surplus" and can be used to offset any potential increase in emissions from any future source that would have had more stringent control requirements from the older 3745–21–07 that is currently in the SIP. Ohio obtained 538 tons NO_X/year actual (and surplus) emission reductions from the Arcelor-Mittal facility as a result of the installation of low NO_X burners in its three reheat furnaces. The requirement for these low NO_X burners is permanent and enforceable because the burner controls are needed to comply with OAC 3745–110, Ohio's NO_X RACT rule. In the Cleveland-Akron-Lorain area, the ratio of NO_X emissions to VOC emissions is 1.36 pounds NO_X/pound VOC. Applying this factor, the VOC offset potential for the Arcelor-Mittal facility NO_X reductions is 396 tons VOC/year. Even if any reasonably foreseeable source were to be constructed that would have been controlled under the prior version of 3745–21–07 but would be uncontrolled under revised rule 3745–21–07, the difference in emissions would be more than compensated by the surplus emission reduction at the Arcelor-Mittal facility.

(4)—This paragraph voids control requirements contained in a permit-to-install, permit-by-rule, permit-to-operate, or Title V permit if the requirements refer to photochemically reactive materials or the need to determine or document materials as being photochemically reactive materials or any recordkeeping and reporting requirements related to photochemically reactive materials. This paragraph is approvable because it is consistent with the main purpose of this rule revision, namely to eliminate the definition of photochemically reactive material.

(5)—This paragraph states that the rule does not apply to any source for which installation commenced after the effective date of the rule. Please refer to the discussion of (A)(3).

(6)—This paragraph specifies methods of determining compliance.

(6)(a)—This paragraph specifies that the test methods and procedures of paragraphs (A) to (C) of rule 3745–21–10 of Ohio's rules be used to determine emission and control efficiency information for controlled and uncontrolled sources.

(6)(b)—This paragraph allows the use of emission factors approved by EPA.

(6)(c)—This paragraph allows emission test data from similar sources or operations to be used provided where EPA has indicated in writing that the use of such tests is acceptable.

This paragraph is approvable because it specifies EPA-approved test methods, emission factors and test data from similar sources.

(B)-(J)—Reserved.

(K)—This paragraph provides specific control requirements for storage tanks covered by the prior version of 3745–21–07 that is contained in Ohio's SIP.

(K)(1)—Lists emission units subject to the control requirements in (K)(2), which requires that the storage tank be equipped with either a floating pontoon or double-deck type cover that includes closure seals or with a vapor recovery system or control system that reduces the emissions of organic compounds by at least 90 percent by weight.

(K)(3)—Lists emission units, consisting of storage tanks with a capacity of 65,000 gallons or less, subject to the control requirements in (K)(4). (K)(4) requires the use of submerged fill or a vapor recovery system.

This paragraph is approvable because it is consistent with the control requirements in the prior version of 3745–21–07 that is contained in Ohio's SIP.

(L)—This paragraph provides facility specific control requirements for oil-water separators covered by the prior version of 3745–21–07 that is contained in Ohio's SIP. Any subject oil-water separators must be equipped with a solid cover with all openings sealed, a floating pontoon or double deck type cover that includes closure seals, or a vapor recovery system that reduces the emissions of organic compounds by at least ninety percent by weight.

This paragraph is approvable because the control requirements are consistent with the prior version of 3745–21–07 that is contained in Ohio's SIP.

(M)—This paragraph provides facility-specific and general control requirements for emissions from operations using liquid organic materials.

(M)(1)—Lists emission units, covered by the prior version of 3745–21–07 that is contained in Ohio's SIP, that are subject to the control requirements in (M)(2).

(M)(2)—Requires that the emission units listed in (M)(1) be subject to a control system that reduces organic emissions by at least 85 percent.

(M)(3)—Other operations using liquid organic materials.

(M)(3)(a)—This paragraph lists nine conditions in (M)(3)(a)(i) to (M)(3)(a)(ix). Any article, machine, equipment, or other contrivance meeting all of these conditions must comply with the control requirements in (M)(2). These conditions include that the article, machine, equipment, or other contrivance is equipped with control equipment for organic compound emissions and also that it commenced installation prior to the effective date of this rule.

(M)(3)(b)—This paragraph requires the owner or operator of any article, machine, equipment, or other contrivance meeting the specifications of paragraph (M)(3)(a), and not listed in paragraph (M)(1), to notify Ohio EPA, within 90 days after the effective date of this rule, of the need to be specified in paragraph (M)(1)—and therefore be subject to the control requirements in (M)(2).

(M)(3)(c)—This paragraph lists seven conditions and if any of them are met then the control requirements of (M)(2)/(M)(3)(a), and the reporting requirements in (M)(3)(b) shall not apply to any article, machine, equipment, or other contrivance that would otherwise be subject.

(M)(3)(c)(i)—This paragraph exempts any article, machine, equipment, or other contrivance that commenced operation after the effective date of this rule. Please see discussion for (A)(3) and (A)(5).

(M)(3)(c)(ii)—This paragraph exempts any article, machine, equipment, or other contrivance whose uncontrolled potential to emit does not exceed 40 pounds per day of organic compound emissions and allows the uncontrolled potential to emit to be established using physical or operational limitation(s) that are federally enforceable or legally and practically enforceable by the state.

(M)(3)(c)(iii) and (iv)—These paragraphs exempt any article, machine, equipment, or other contrivance that is subject to and complying with an

overall control efficiency that is greater than 85 percent.

(M)(3)(c)(v)—This paragraph refers to paragraphs (M)(3)(g) and (M)(4), and is discussed with those paragraphs.

(M)(3)(c)(vi)—This paragraph exempts heatset web offset printing lines that are subject to and complying with a requirement that specifies that their drier(s) be equipped with a control device having either a control efficiency equal to or greater than 90 percent or an outlet concentration of less than 20 parts per million, by volume.

(M)(3)(c)(vii)—This paragraph exempts any article, machine, equipment, or other contrivance that is regulated by and complying with chapter 3745–76, which regulates non-methane organic emissions from existing landfills.

(M)(3)(d), (e) and (f)—These paragraphs provide alternative emission limitations, which have been adequately documented, to those in (M)(2), for specifically identified emission units at the indicated facilities.

(M)(3)(g) and (h)—These paragraphs address SMC operations. Please refer to the discussion of (M)(5)(h).

(M)(4)—Except as provided in paragraph (M)(5) (discussed below) this paragraph requires the owner or operator of each article, machine, equipment, or other contrivance in which any liquid organic material comes into contact with flame or is baked, heat-cured, or heat-polymerized, in the presence of oxygen, and is not specified in paragraph (M)(1) of this rule, to not discharge more than 15 pounds of organic materials into the atmosphere in any one day, nor more than 3 pounds in any hour, unless the organic material emissions have been reduced by at least 85 percent by weight. This paragraph does not apply to any source for which installation commenced on or after the effective date of this rule.

(M)(5)—This paragraph lists several exemptions that are carried over from the prior version of 3745–21–07 that is contained in Ohio's SIP.

(M)(5)(a)—exempts the use of cleanup material from the control requirements in paragraph (M)(2).

(M)(5)(b)—exempts emissions that are not VOCs from the control requirements in (M)(2), (M)(3)(a), and (M)(4).

(M)(5)(c)—This paragraph exempts the use of liquid organic material, from the control requirements in paragraph (M)(2), if the liquid organic material has a boiling point higher than 200 degrees Fahrenheit at 0.5 millimeter mercury absolute pressure, or has an equivalent vapor pressure, unless the liquid organic material is exposed to temperatures exceeding 220 degrees Fahrenheit.

(M)(5)(d)—This paragraph exempts sources from the requirements of paragraph (M)(4) if (i) the volatile content of the material described in (M)(4) consists only of water and liquid organic material, and the liquid organic material comprises no more than 20 percent by volume of the volatile content; or, (ii) the volatile content of the material described in paragraph (M)(4) does not exceed 20 percent by volume.

(M)(5)(e)—This paragraph allows the provisions of paragraphs (M)(2), (M)(3)(d), (M)(3)(e), (M)(3)(f), (M)(3)(g), (M)(3)(h), and (M)(4) to be replaced by an alternative emission limitation if EPA determines that the alternative emission limitation is the lowest emission limitation that the article, machine, equipment, or other contrivance is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(M)(5)(f)—This paragraph exempts emissions resulting from the use of any liquid organic materials if those emissions are regulated by rule 3745–21–09, 3745–21–12, 3745–21–13, 3745–21–14,3745–21–15, 3745–21–16, or 3745–21–18.

(M)(5)(g)—Consistent with existing OAC 3745–21–07, this rule exempts sources in Darke, Fairfield, Madison, Perry, Pickaway, Preble, or Union County that are within a facility having the potential to emit not more than 100 tons of organic compounds per calendar year.

(M)(5)(h)—This paragraph exempts sheet molding compound manufacturing operations from the emission limits in (M)(3)(g) provided that the resin delivery system to the doctor box on the SMC manufacturing machine is closed or covered and a nylon containing film is used to enclose the sheet molding compound.

This exemption is acceptable because Ohio has adopted OAC 3745–21–25 for Reinforced Plastics Composites Production Operations, which provides a sufficient level of control (95 percent for subject sources) for SMC machines. OAC 3745–21–25 was proposed for approval on January 27, 2011 (76 FR 4835). Paragraph M is approvable because the control requirements (typically 85 percent or higher) and exemptions are consistent with the prior version of 3745–21–07 that is contained in Ohio's SIP, except as it applies to SMC machines. As stated above, Ohio adopted rule 3745–21–25 for the control of SMC machines. (N) This paragraph requires that smokeless flares be required for the waste gas flare systems that were covered by the prior version of 3745–21–07 that is contained in Ohio's SIP. This paragraph is approvable because it is consistent with the control requirements in the prior version of 3745–21–07 that is contained in Ohio's SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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.

List of Subjects in 40 CFR Part 52

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

Dated: March 30, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–8951 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0335; FRL–9294–4]

Approval and Promulgation of Implementation Plans; Texas; Proposed Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA or Act), EPA is proposing to disapprove the portion of the Texas CAA section 110(a)(2) "Infrastructure" State Implementation Plan (SIP) submittal addressing significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 24-hour fine particle ($PM_{2.5}$) national ambient air quality standards (NAAQS). On November 23, 2009, the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), submitted a SIP to EPA intended to address the requirements of CAA section 110(a)(2) for "infrastructure." In this action, EPA is proposing to disapprove the portion of the Texas' SIP revision submittal that intended to address the section 110(a)(2)(D)(i)(I) requirements prohibiting a state's emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other state. The rationale for the disapproval action of the SIP revision is described in this proposal. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2011–0335, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2011–0335. 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.

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 Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; fax number (214) 665–7263; e-mail address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's notice?

We are proposing to disapprove a submission from the State of Texas intended to demonstrate that Texas has adequately addressed the elements of CAA section 110(a)(2)(D)(i)(I) that require the State's SIP to contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in any other state. We are proposing to determine that the Texas submission does not contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other downwind states. Any remaining elements of the submittal, including language to address other CAA Section 110(a)(2) elements, are not addressed in this action. EPA is proposing to disapprove only the provisions which relate to the Section 110(a)(2)(D)(i)(I) demonstration for the 2006 $PM_{2.5}$ NAAQS. This action is being taken under section 110 of the CAA.

II. What is the background for this proposed action?

On December 18, 2006, we revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. Section 110(a)(1) of the CAA requires states to submit infrastructure SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe.[1]

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On September 25, 2009, we issued our "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Guidance). We developed the 2009 Guidance to make recommendations to states for making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2009 Guidance, we indicated that SIP submissions from States pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i)(I) should contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state. We further indicated that the state's submission should explain whether or not emissions from the state have this impact and, if so, address the impact. We stated that the state's conclusion should be supported by an adequate technical analysis. We recommended the various types of information that could be relevant to support the state SIP submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Furthermore, we indicated that states should address the "interfere with maintenance" requirement independently which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly in the 2009 Guidance, we stated that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS.

We promulgated the CAIR on May 12, 2005, (see 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for $PM_{2.5}$ and/or ozone in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their CAA section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another state with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. Many states adopted the CAIR provisions and submitted SIPs to us to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

We were sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to our petition for rehearing, the Court issued an order remanding CAIR to us without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until we replace it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed us to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on us for completing that action. *Id.* In order to address the judicial remand of CAIR, we have proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[2]

III. What is EPA's evaluation of Texas' submittal?

On November 23, 2009, the State of Texas, through TCEQ, provided a SIP revision to us intended to address the requirements of Section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS as well as other requirements of Section 110(a)(2). In this rulemaking, we are addressing only the requirements of Section 110(a)(2) that pertain to prohibiting sources in Texas from emitting pollutants that will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other states.

[1] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. The rule was published in the Federal Register on October 17, 2006 and became effective December 18, 2006 (71 FR 61144). Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

[2] See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

In its submission, Texas certified that the State is meeting its Section 110(a)(2)(D)(i)(I) obligations by virtue of its CAIR SIP for $PM_{2.5}$. Texas specifically said that it submitted a SIP revision to implement CAIR and is currently in the process of revising the CAIR SIP and rule to account for federal rule revisions and state legislative changes.[3] Irrespective, CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS was revised in 2006, and as mentioned above neither CAIR nor any of the State's revisions to its CAIR program address interstate transport with respect to the 2006 $PM_{2.5}$ NAAQS.[4] Thus, reliance on CAIR and the State's CAIR SIP provisions cannot be used to comply with Section 110(a)(2)(D)(i)(I) for the respective 2006 $PM_{2.5}$ NAAQS.

We also note that several states in their submission claim that controls planned for or already installed on sources within the state to meet the CAIR provisions satisfied the Section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. However, states will not be able to rely permanently upon the emissions reductions predicted by CAIR, because CAIR was remanded to us and will not remain in force permanently. Furthermore, we are in the process of developing a new Transport Rule to address the concerns of the Court as outlined in its decision remanding CAIR. For these reasons, we would not be able to approve Texas' SIP submission pertaining to the requirements under Section 110(a)(2)(D)(i)(I) because it relies on CAIR for emission reduction measures.

Based upon our evaluation, we are proposing that this SIP revision does not meet the requirements of Section 110(a)(2)(D)(i)(I) of the CAA. Therefore, we are proposing to disapprove the portion of the Texas Infrastructure SIP submission intended to demonstrate that its SIP meets the Interstate Transport requirements of 110(a)(2)(D)(i)(I) of the CAA for the 2006 $PM_{2.5}$ NAAQS. The portion of the Texas submission that addresses 110(a)(2)(D)(i)(I) is severable from the remainder of the Texas submittal which addresses other elements of 110(a)(2), meaning our disapproval of this element does not impact the other elements of the Texas submission which we will address in separate **Federal Register** actions. Therefore, we are proposing to disapprove only those provisions which relate to the 110(a)(2)(D)(i)(I) demonstration and to take no action on the remainder of the elements and their demonstrations at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515) or is required in response to a finding of substantial inadequacy as described in § 7410(k)(5) (SIP call), starts a sanctions clock. The provisions in the submittal we are proposing to disapprove were not submitted to meet either of those requirements. Therefore, if we take final action to disapprove this submittal, no sanctions will be triggered. The full or partial disapproval of a required State Implementation Plan revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. In our Transport Rule proposal we took comment on whether we should include Texas in a FIP for $PM_{2.5}$ (75 FR 45210, 45284). The finalized Transport Rule may serve as the FIP that EPA intends to implement for the State.

IV. 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 act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

[3] On July 30, 2007, we approved as an abbreviated SIP revision for the allowance allocation methodologies for Phase 1 of the CAIR NO_X annual trading program and the Compliance Supplement Pool; see 72 FR 41453. The subsequent SIP revision was submitted to EPA for review in March 4, 2010, and was submitted to address our timing concerns with the Texas allowance allocation methodology for Phase 2 of the CAIR NO_X annual trading program. EPA has not acted on this subsequent SIP revision submittal and is not taking action on it at this time.

[4] Further, as explained above and in the Transport Rule proposal, the DC Circuit in *North Carolina* v. *EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: April 5, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–8995 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9291–5]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Spiegelberg Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of intent.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the Spiegelberg Landfill Superfund Site (Site) located in Green Oak Township, Michigan from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail:* Howard Caine, Remedial Project Manager, at *caine.howard@epa.gov* or Cheryl Allen, Community Involvement Coordinator, at *allen.cheryl@epa.gov*.
- *Fax:* Gladys Beard, Deletion Process Manager, at (312) 697–2077.
- *Mail:* Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353–9685, or Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353–6196 or (800) 621–8431.
- *Hand Delivery:* Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 W. Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. 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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be 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 the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

- U.S. Environmental Protection Agency—Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
- Hamburg Township Library, 10411 Merrill Road., P.O. Box 247, Hamburg, MI 48139, (810) 231–1771, Hours: Monday through Thursday, 9 a.m. to 8 p.m.; Friday 12 p.m. to 6 p.m. and Saturday 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–9685, *caine.howard@epa.gov*.

SUPPLEMENTARY INFORMATION: In the "*Rules and Regulations*" section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Spiegelberg Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules and Regulations* section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: April 5, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–8880 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1188]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities

listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 12, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1188, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sevier County, Utah, and Incorporated Areas				
Albinus Canyon	Approximately 400 feet downstream of Old U.S. Highway 89.	None	+5343	Unincorporated Areas of Sevier County.
	Approximately 500 feet upstream of I–70	None	+5445	
East Koosharem Creek	Approximately 1,800 feet downstream of West 200 South Street.	None	+6870	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 500 feet upstream of North 300 West Street.	None	+6975	
Indian Creek	Approximately 500 feet downstream of East 300 North Street.	None	+5416	Town of Joseph.
	At the downstream side of I–70	None	+5504	
Indian Creek Split Flow	Approximately 400 feet downstream of State Highway 118.	None	+5435	Town of Joseph.
	At the Indian Creek divergence	None	+5485	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Koosharem Creek	Approximately 1,700 feet downstream of West 200 South Street.	None	+6878	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 0.4 mile upstream of West 200 North Street.	None	+7037	
North Koosharem Creek	Approximately 700 feet downstream of North 200 East Street.	None	+6893	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 1,800 feet upstream of North 300 West Street.	None	+7033	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Joseph

Maps are available for inspection at 25 East 100 North Street, Joseph, UT 84739.

Town of Koosharem

Maps are available for inspection at 45 North Main Street, Koosharem, UT 84744.

Unincorporated Areas of Sevier County

Maps are available for inspection at 250 North Main Street, Richfield, UT 84701.

Yakima County, Washington, and Incorporated Areas

Cottonwood Creek	Approximately 970 feet downstream of Dazet Road ...	None	+1244	Unincorporated Areas of Yakima County.
	Approximately 2.08 miles upstream of Hubbard Road	None	+1831	
Cottonwood Creek Left Bank Overflow Downstream.	At the Cottonwood Creek confluence	None	+1293	Unincorporated Areas of Yakima County.
	At the Cottonwood Creek divergence	None	+1323	
Cottonwood Creek Left Bank Overflow Upstream.	Approximately 0.26 mile downstream of Canyon Road	None	+1406	Unincorporated Areas of Yakima County.
	Approximately 0.64 mile upstream of Canyon Road ...	None	+1475	
Cottonwood Creek Tributary 1.	At the Cottonwood Creek confluence	None	+1613	Unincorporated Areas of Yakima County.
	Approximately 0.53 mile upstream of Cottonwood Canyon Road.	None	+1668	
Secondary Tributary to Wide Hollow Tributary 2.	At the Tributary to Wide Hollow Creek Tributary 2 confluence.	None	+1519	Unincorporated Areas of Yakima County.
	Approximately 0.36 mile upstream of the Tributary to Wide Hollow Creek Tributary 2 confluence.	None	+1569	
Shaw Creek	At the Wide Hollow Creek confluence	None	+1179	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 160 feet upstream of Summitview Road.	None	+1438	
Shaw Creek—Wide Hollow Creek Overflow.	At the Wide Hollow Creek confluence	None	+1152	City of Yakima.
	Approximately 0.27 mile upstream of Westbrook Loop	None	+1182	
Shaw Creek—Wide Hollow Creek Walmart Overflow 1.	At the Wide Hollow Creek confluence	None	+1151	City of Yakima.
	Approximately 1,307 feet upstream of South 64th Avenue.	None	+1158	
Shaw Creek—Wide Hollow Creek Walmart Overflow 2.	At the Wide Hollow Creek confluence	None	+1149	City of Yakima.
	Approximately 1,236 feet upstream of South 64th Avenue.	None	+1160	
Shaw Creek Ditch 1	At the Shaw Creek confluence	None	+1431	Unincorporated Areas of Yakima County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 170 feet downstream of North 112th Avenue.	None	+1435	
Shaw Creek Left Bank Overflow.	At the Shaw Creek confluence	None	+1252	Unincorporated Areas of Yakima County.
	At the Shaw Creek divergence	None	+1270	
Shaw Creek North Pear Overflow.	At the Shaw Creek confluence	None	+1235	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 560 feet upstream of Orchard Avenue	None	+1284	
Shaw Creek Overflow	At the Shaw Creek confluence	None	+1187	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.3 mile upstream of South 91st Avenue.	None	+1222	
Shaw Creek Overflow South	At the Shaw Creek confluence	None	+1182	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of South 88th Avenue.	None	+1215	
Shaw Creek Tributary	At the Shaw Creek confluence	None	+1230	Unincorporated Areas of Yakima County.
	Approximately 160 feet downstream of South Mize Road.	None	+1407	
Tributary to Wide Hollow Creek Tributary 2.	At the Wide Hollow Creek Tributary 2 confluence	None	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.42 mile upstream of Lynch Road	None	+1566	
Wide Hollow Creek	At the Yakima River confluence	+959	+958	City of Union Gap, City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Stone Road	None	+1733	
Wide Hollow Creek Mill Weir Overflow.	At the Wide Hollow Creek confluence	None	+958	City of Union Gap.
	At the Wide Hollow Creek divergence	None	+964	
Wide Hollow Creek Right Bank Overflow 1.	At the Wide Hollow Creek confluence	None	+1413	Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of Wide Hollow Road.	None	+1450	
Wide Hollow Creek Tributary 1.	At the Wide Hollow Creek confluence	None	+1482	Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Cook Road	None	+1712	
Wide Hollow Creek Tributary 1 Midflow Split.	At the Wide Hollow Creek Tributary 1 confluence	None	+1647	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek Tributary 1 divergence	None	+1660	
Wide Hollow Creek Tributary 1 Left Bank Overflow.	Approximately 300 feet downstream of Stone Road	None	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.7 mile upstream of Hollow Creek Lane.	None	+1545	
Wide Hollow Creek Tributary 2.	At the Wide Hollow Creek confluence	None	+1450	Unincorporated Areas of Yakima County.
	Approximately 0.45 mile upstream of Tieton Drive	None	+1594	
Wide Hollow Structure 116 Bypass.	At the Wide Hollow Creek confluence	None	+1370	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+1378	
Wide Hollow Structure 125 Bypass.	At the Wide Hollow Creek confluence	None	+1430	Unincorporated Areas of Yakima County.
	At the upstream side of Wide Hollow Road	None	+1438	
Wide Hollow Structure 21 Bypass.	At the Ahtanum Creek confluence	None	+953	City of Union Gap, Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+975	
Wide Hollow Structure 36 Bypass.	At the Wide Hollow Creek confluence	None	+1012	City of Union Gap.
	At the Wide Hollow Creek divergence	None	+1016	
Wide Hollow Structure 47 Bypass.	At the Wide Hollow Creek confluence	None	+1045	City of Union Gap.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	At the Wide Hollow Creek divergence	None	+1050	
Wide Hollow Structure 86 Bypass.	At the Wide Hollow Creek confluence	None	+1203	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+1217	
Wide Hollow Structure 99 Bypass.	At the Wide Hollow Creek confluence	None	+1264	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+1280	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Union Gap

Maps are available for inspection at 102 West Ahtanum Road, Union Gap, WA 98903.

City of Yakima

Maps are available for inspection at 129 North 2nd Street, Yakima, WA 98901.

Unincorporated Areas of Yakima County

Maps are available for inspection at 128 North 2nd Street, Yakima, WA 98901.

Wirt County, West Virginia, and Incorporated Areas

Daley Run	Approximately 1,400 feet downstream of County Route 14/1.	None	+610	Unincorporated Areas of Wirt County.
	Approximately 500 feet downstream of County Route 14/1.	None	+610	
Little Kanawha River	Approximately 1.8 miles downstream of the Hughes River confluence.	None	+610	Unincorporated Areas of Wirt County.
	Approximately 4.2 miles downstream of the Hughes River confluence.	None	+610	
	Approximately 1.4 miles downstream of State Route 5	None	+623	
	Approximately 650 feet downstream of State Route 5	None	+625	
Tucker Creek	At the Little Kanawha River confluence	None	+623	Unincorporated Areas of Wirt County.
	Approximately 1.1 miles upstream of the Little Kanawha River confluence.	None	+623	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Wirt County

Maps are available for inspection at the Wirt County Courthouse, Corner Court of Washington Street, Elizabeth, WV 26143.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–8852 Filed 4–12–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for additional public comment.

SUMMARY: On February 1, 2011, FMCSA published a notice of proposed rulemaking (NPRM), which proposed that electronic on-board recorders (EOBR) be required for commercial motor vehicle (CMV) operators who must keep records of duty status (RODS) (EOBR 2). In the EOBR 2 NPRM and in a predecessor EOBR rulemaking published on April 5, 2010 (EOBR 1), the Agency advised that it is required by statute to ensure that electronic devices are not used to harass CMV drivers, although they can be used by motor carriers to monitor productivity. The Agency believes it satisfactorily addressed the statutory requirement in both its EOBR rulemaking proceedings. In light of recent litigation challenging the Agency's treatment of driver harassment in EOBR 1, however, FMCSA wishes to ensure that interested parties have a full opportunity to address this issue in the active EOBR 2 rulemaking.

DATES: Comments must be received on or before May 23, 2011.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number (FDMS) in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT Privacy Act system of records notice for the FDMS in the **Federal Register** published on January 17, 2008 (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370. *For legal issues:* Mr. Charles Fromm, Assistant Chief Counsel for Enforcement and Litigation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 or by telephone at (202) 366–3551.

SUPPLEMENTARY INFORMATION:

Regulatory Background and Authority

On April 5, 2010, the Agency issued a final rule (EOBR 1) (75 FR 17208) that provides new technical requirements for electronic on-board recorders (EOBR). The EOBR 1 final rule also requires the limited, remedial use of EOBRs for motor carriers with significant hours-of-service (HOS) violations. The EOBR 1 final rule requires a motor carrier found to have a 10 percent violation rate for any HOS regulation listed in Appendix C of 49 CFR part 385 during a single compliance review to install and use EOBRs on all of its CMVs for a period of 2 years. The compliance date for the rule is June 4, 2012.

Subsequently, on February 1, 2011, the Agency published an NPRM that proposed to expand the scope of EOBR 1 to a broader population of motor carriers (EOBR 2) (76 FR 5537). Under the EOBR 2 NPRM, within 3 years of the effective date of the final rule, all motor carriers currently required to maintain RODS for HOS recordkeeping would be required to use EOBRs. In both EOBR rulemakings, FMCSA explained that DOT is directed by 49 U.S.C. 31137(a) to consider driver harassment in promulgating an EOBR rule. Section 31137(a) provides:

> If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

Although the Agency is not aware of any legislative history or case law concerning 49 U.S.C. 31137(a), FMCSA assessed this provision in the context of all existing legal authorities, permissible productivity monitoring, and related public comments. Based on these considerations, the Agency understands the term "harass" in Section 31137(a) to refer to harassment of drivers resulting from invasion of their privacy and has so interpreted the statutory language. FMCSA has addressed that pertinent statutory concern in this context in both the EOBR 2 NPRM (76 FR at 5552) and the EOBR 1 final rule (75 FR at 17220–21).

First, Section 31137(a) expressly permits use of EOBRs to monitor driver productivity. As a result, the statute permits carriers to use the devices for productivity-related purposes, which could include maintaining contact with drivers, monitoring driver progress, determining delivery and work schedules, and even requiring drivers to return to duty, so long as the drivers would not be put in violation of the HOS or other regulations. Section 31137(a) also expressly contemplates the use of monitoring devices to increase compliance with HOS regulations. As a result, the statute permits carriers to use the devices to monitor when, and for how long, drivers are in a particular duty status. Although some drivers might perceive such monitoring as a form of harassment,

FMCSA construes Section 31137(a) to permit these activities, either because they "monitor productivity," which is expressly permitted under the statute, or because they use an EOBR to "increase compliance * * * with hours of service regulations," and thus are outside the meaning of "harass" under Section 31137(a).

Second, as FMCSA construes Section 31137(a), the Agency is not required, in the EOBR rulemakings, to protect against any and all possible harassment that is not related to EOBRs. Rather, its duty is to ensure that the monitoring devices required by the Agency do not increase the harassment of drivers, not to ensure that the devices decrease any previously-existing potential for driver harassment that might have occurred in the absence of such monitoring devices when paper records were the exclusive required means of recording and reporting driver duty status. Accordingly, in exercising its obligations under Section 31137(a), FMCSA may appropriately take into account all existing authorities prohibiting potential harassment of drivers in determining whether the Agency must enact *new* protections against harassment specifically for monitoring devices.

Other existing regulatory and statutory provisions already prohibit carriers from attempting to use EOBRs to harass drivers for ostensible productivity reasons that are actually illegal or illegitimate. For example, 49 CFR 392.3 prohibits motor carriers from requiring ill or fatigued drivers to drive. Accordingly, carriers cannot use EOBRs to monitor a driver's hours to see if the driver has driving time remaining, and then nonetheless force a driver who is fatigued or ill to return to work. Similarly, 49 CFR part 395 sets forth HOS regulations for CMV drivers. Section 395.3 prohibits a carrier from permitting or requiring any driver to violate these regulations. Section 395.8 also subjects a carrier, as well as a driver, to prosecution for making false reports of duty status. As a result, carriers are forbidden from requiring a driver to manipulate an EOBR to violate HOS regulations or to use an EOBR to otherwise violate those regulations. Further, employer retaliation against a driver who refused to modify his accurate HOS records in response to carrier harassment would be illegal under 49 U.S.C. 31105(a), which prohibits retaliation against employees for filing safety complaints or refusing to operate vehicles in violation of safety regulations, based on unsafe vehicle conditions, or where an employee accurately reports hours on duty. Thus, even if the "harassment" contemplated by Section 31137(a) extended to these types of scenarios, previously-existing statutes and regulations already address these concerns, and the Agency need not adopt new regulations or limit the capabilities of EOBRs to mitigate them. Rather, as explained above, FMCSA focused its obligations under Section 31137(a) on privacy concerns because those issues represented potential for harassment that both arose for the first time with EOBRs and which were not addressed by previously-existing statutes or regulations.

Furthermore, the EOBRs required by the Agency do not *increase* the potential for carriers to harass drivers for ostensible productivity reasons that are actually illegal or illegitimate, beyond the potential that already exists with paper records. The EOBRs required by the Agency do *not* require the immediate, real-time transmittal of driver duty status data to carriers, which might arguably increase the potential for driver harassment. Rather, under EOBR 1, drivers are required only to submit their duty status data to carriers within three days after it is recorded, *see* 49 CFR 395.16(m), and under EOBR 2 drivers would be subject to the same requirement. Thus, other than the driver privacy concerns noted and addressed by FMCSA, the Agency perceives no other form of "harassment" under Section 31137(a) that is implicated by monitoring devices themselves that must be addressed by the Agency. Indeed, commenters to EOBR 1 said that EOBRs could actually limit carrier harassment with respect to HOS rules. These commenters stated that EOBRs would force carriers that might otherwise harass drivers by coercing them to violate HOS rules to dramatically reduce such practices. Given the accuracy of EOBRs compared to paper logs, where such violations occur, they would be easier to detect and document to prove employer harassment.

Third, driver comments submitted to both the EOBR 1 and EOBR 2 dockets largely focused on the potential for harassment in the privacy context. Their concerns focused primarily on the potential invasion of privacy by the government (*e.g.,* vehicle tracking) and on how data collected would be safeguarded, used, and disseminated (*e.g.,* in post-accident litigation or in personal litigation such as divorce proceedings).

Based on the factors above, the Agency has determined that the statute requires it to protect against privacy invasion in the EOBR rulemakings. In its EOBR 1 rulemaking and in the EOBR 2 NPRM, the Agency took specific steps to ensure that EOBRs are not used to violate driver privacy or to otherwise harass drivers in the privacy context. The Agency also included additional consideration of this issue in the Privacy Impact Analysis conducted in support of each EOBR rulemaking initiative. For example, the technical specifications for the devices mandated in EOBR 1 and proposed for use in EOBR 2 do not require that an EOBR track the precise street address or location of a driver, but that it only record the nearest city, town or village and state when it records the driver's location (75 FR at 17220 and 76 FR at 5545). And FMCSA requires an EOBR to record a driver's location at no more than 60 minute intervals, having specifically rejected the "real time" 1-minute intervals proposed in the EOBR 1 NPRM as potentially invading drivers' privacy. While devices with such real time capability are already available on the market, FMCSA does not read Section 31137(a) as a mandate to prohibit motor carriers from voluntarily using these devices, or their enhanced functionality. The Agency understands Section 31137(a) to require FMCSA to ensure that the devices *the Agency itself* requires are not used to harass drivers; the statute does not require the Agency to prohibit private parties from voluntarily adopting technologies that have capabilities beyond those required by the Agency-mandated EOBRs. Also, EOBR 1 does include provisions to ensure information collected is not misused. *See* Privacy Impact Assessment at 7 (FMCSA–2004–18940–1156).

Recently, however, the Owner-Operator Independent Drivers Association (OOIDA) challenged the EOBR I final rule in a lawsuit brought in the United States Court of Appeals for the Seventh Circuit. In that case, *Owner-Operator Independent Drivers Ass'n* v. *U.S. Dep't of Transp.* (Case No. 10–2340) (7th Cir.), OOIDA raised several concerns relating to EOBRs and their potential for harassment. During oral argument on February 7, 2011, the Court specifically noted these concerns.

The EOBR 1 rule is a final Agency action and currently remains under review by the Seventh Circuit. Accordingly, it is not subject to further comment or consideration on harassment or any other matter. The Agency believes that it has appropriately interpreted Section 31137(a) to require the Agency, in the EOBR rulemakings, to protect drivers from harassment resulting from invasion of their privacy. To ensure no misunderstanding on the issue,

however, the Agency seeks to maximize the opportunity for public participation on harassment by inviting further comment during the open EOBR 2 rulemaking.

By notice published on March 10, 2011 (76 FR 13121), the Agency has already extended the public comment period for the EOBR 2 NPRM to May 23, 2011. The Agency encourages interested parties to take advantage of this extended comment period to submit comment on the issues set forth in this notice. As indicated in the March 10 extension notice, the Agency will also accept and consider comments on all issues within the scope of the NPRM.

Request for Comments: FMCSA encourages all interested parties to submit comments, including supporting data, information or examples, regarding the use of EOBRs for purposes of driver harassment. In particular, the Agency encourages commenters to address the following:

- Experiences drivers have had regarding harassment, including coercion by carriers to evade the HOS regulations;
- Whether such carrier activity would be permitted as productivity monitoring or would be barred by other statutory or regulatory provisions;
- Whether use of EOBRs would impact the ability of carriers, shippers, and other parties to harass or coerce drivers to violate HOS requirements;
- The effectiveness of mechanisms currently available under 49 CFR 392.3, 49 CFR part 395 and 49 U.S.C. 31105(a) to protect against carrier coercion; and
- Whether additional regulations or guidance from FMCSA are necessary to ensure EOBR devices are not used to harass vehicle operators.

Issued on: April 7, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–8789 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0077; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the Spring Mountains acastus checkerspot butterfly (*Chlosyne acastus robusta*) as endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Spring Mountains acastus checkerspot butterfly as endangered or threatened may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Spring Mountains acastus checkerspot butterfly as endangered or threatened is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 13, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is Eastern Standard Time on this date. After June 13, 2011, you must submit information directly to the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R8–ES–2010–0077, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Send a Comment or Submission."
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2010–0077; 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 information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Jill Ralston, Deputy State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130; by telephone 702–515–5230; or by facsimile to 702–515–5231. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Spring Mountains acastus checkerspot butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The subspecies' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(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.

If, after the status review, we determine that listing the Spring Mountains acastus checkerspot butterfly is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the subspecies. Therefore, within the geographical range currently occupied by the Spring Mountains acastus checkerspot butterfly, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the subspecies is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section of this document. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On September 18, 2009, we received a petition, dated September 16, 2009, from Bruce M. Boyd, requesting that the Spring Mountains acastus checkerspot butterfly be listed as endangered under the Act (Boyd 2009). The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a November 24, 2009, letter to petitioner Bruce M. Boyd, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the butterfly under section 4(b)(7) of the Act was not warranted (Service 2009, p. 1). We also stated that funding was secured and that we anticipated making an initial finding in Fiscal Year 2010 as to whether the petition contains substantial information indicating that the action may be warranted. This finding addresses the petition.

Previous Federal Actions

In 1991 and 1994, the U.S. Fish and Wildlife Service (Service) included the Spring Mountains acastus checkerspot butterfly in a compilation of taxa that were to be reviewed for possible addition to the Lists of Endangered and Threatened Wildlife and Plants (56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In both years the Spring Mountains acastus checkerspot butterfly was assigned to a "Category 2" species. Such a designation indicated that proposing to list was possibly appropriate, but additional information on biological vulnerability and threats were needed to support the preparation of a proposed rule. The trend for Spring Mountains acastus checkerspot butterfly was described as "Unknown." These notices stressed that species in this category were not proposed for listing, nor were there any plans to list unless supporting information became available.

In the February 28, 1996, Candidate Notice of Review (61 FR 7595), we adopted a single category of candidate species defined as follows: "Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded." In previous Candidate Notices of Review, species matching this definition were known as Category 1 candidates for listing. Thus, the Service no longer considered Category 2 species as candidates and did not include them in the 1996 or any subsequent Candidate Notices of Review. The decision to stop considering Category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

Species Information

The Spring Mountains acastus checkerspot butterfly (*Chlosyne acastus robusta*) is a subspecies of sagebrush checkerspot butterfly (*Chlosyne acastus*) belonging to the Nymphalidae (brush-footed butterflies) family. Synonyms of the genera *Chlosyne* have included *Charidryas* and *Thessalia* (Opler and Warren 2003, pp. 35–36). Early taxonomic assessments of specimens *C. a. robusta* ascribed it to *C. a. vallismortis* (= *C. palla vallismortis;* Austin 1981, p. 71). Later interpretations suggested that it was more closely aligned to *C. acastus* (Austin 1985, p. 108). Further evaluations resulted in recognition of

the Spring Mountains acastus checkerspot butterfly as a distinct subspecies (Austin 1998a, p. 576). There are nine subspecies of sagebrush checkerspot butterflies described for North America (Pelham 2008, pp. 379–380), of which four (*C. a. acastus, C. a. dorothyi, C. a. robusta,* and *C. a. neumoegeni*) occur in Nevada (Austin 1998b, p. 842).

The Spring Mountains acastus checkerspot butterfly is known only from the Spring Mountains in Clark and Nye Counties, Nevada (Austin 1998a, p. 577), at elevations ranging from minimums near 1,800 meters (m) to maximums at 2,700 m (5,900–8,900 feet (ft); Weiss *et al.* 1997, p. 17). In low elevation desert areas adjacent to the distribution of Spring Mountains acastus checkerspot butterfly, a similar looking subspecies, *C. a. neumoegeni,* may occur (Austin 1998a, p. 577), and is likely the nearest subspecies spatially. The majority of observations and habitat for the Spring Mountains acastus checkerspot butterfly occur within the Spring Mountains National Recreation Area, which is managed by the U.S. Department of Agriculture, Forest Service (hereafter referred to as Forest Service), Humboldt-Toiyabe National Forest. However, one colony occurs on private property bordered by Forest Service managed lands, and an incidental observation at another location has been documented on lands managed by the U.S. Department of the Interior, Bureau of Land Management.

Sagebrush checkerspot butterfly habitat is described as dry washes in sagebrush-juniper woodland, oak or mixed conifer woodland, and streambeds (Opler 1999, p. 199). Elevations used by Spring Mountains acastus checkerspot butterfly coincide with the intergraded upper elevation of *Pinus monophylla–Juniperus osteosperma* (piñyon-juniper) communities at 1,250–2,500 m (4,100–8,200 ft) and the lower elevation *Abies concolor–Pinus ponderosa* var. *scopulorum* (white fir-ponderosa pine) communities at 2,000–2,530 m (6,560–8,300 ft) (Niles and Leary 2007, pp. 5–6). Open vegetation communities associated with previous fire disturbances appear to be the preferred habitat (Boyd and Austin 2002, p. 5). Washes and linear features are used primarily as mating sites during the flight season (Boyd and Austin 2001, p. 6; Boyd and Austin 2002, p. 5).

Spring Mountains acastus checkerspot butterfly males may seek females all day by perching and sometimes patrolling gulches (Scott 1986, p. 307; Kingsley 2008, pp. 7–8). Males may perch on several projecting objects in the same area such as rocks or branches (Scott 1986, pp. 46–47, 307; Kingsley 2008, pp. 4, 7–8). At these sites males behave territorially by remaining in the same area and pursuing any other butterflies or insects that come within a zone of a few square meters around the male and continue this behavior towards the intruding animal until it leaves (Boyd and Austin 2001, p. 5; Boyd and Austin 2002, p. 5; Kingsley 2008, pp. 4, 7–8). During a brief flight season (Weiss *et al.* 1997, pp. 6, 37), females remain at the site long enough to find a male to mate with, and then leave the area to oviposit (Boyd and Austin 2001, p. 6; Boyd and Austin 2002, p. 5).

The flight season of the Spring Mountains acastus checkerspot is between mid-May and mid-July (Weiss *et al.* 1997, pp. 6, 37; Austin 1998a, p. 576; Boyd 2004, pp. 1–2), peaking near the later part of June (Weiss *et al.* 1997, pp. 6, 37; Boyd and Austin 1999, p. 20; Boyd and Austin 2002, p. 4; Boyd 2004, p. 8). Distances moved during flight periods have not been documented, although Schrier *et al.* (1976, p. 285) observed that a related species, the northern checkerspot butterfly (*C. palla*), could move as far as 1.6 kilometers (1 mile). During the flight season, Spring Mountains acastus checkerspot adults have been observed nectaring on *Eriodictyon angustifolium* (yerba santa), *Heliomeris multiflora* var. *nevadensis* (= *Viguiera multiflora;* Nevada golden-eye), *Packera multilobata* (= *Senecio multilobatus;* lobeleaf groundsel), unknown *Ceanothus* sp. (ceanothus species), unknown *Melilotus* sp. (clover species), *Penstemon palmeri* (Palmer penstemon), and an unknown *Apocynum* sp. (dogbane species) (Weiss *et al.* 1995, p. 9; Boyd *et al.* 2000a, p. 6; Jones & Stokes 2007a, p. 4).

Chrysothamnus viscidiflorus has been documented as a larval host plant (Boyd and Austin 2002, p. 2; Austin and Leary 2008, p. 99), and according to the petition, is common and widely distributed in the range (Boyd 2009, p. 1). Common names used interchangeably among subspecies of *C. viscidiflorus* have included Douglas rabbitbrush, chamisa, green rabbitbrush, yellow rabbitbrush, viscid rabbitbrush, sticky leaved rabbitbrush, downy rabbitbrush, and narrow leaved rabbitbrush (Stubbendieck *et al.* 2003, p. 249; Niles and Leary 2007, p. 19). Three subspecies of *C. viscidiflorus* have been documented in the Spring Mountains, including *C. v. lanceolatus* (variously known as viscid rabbitbrush, sticky leaved rabbitbrush, and yellow rabbitbrush), *C. v. puberulus* (downy rabbitbrush), and *C. v. viscidiflorus* (variously known as viscid rabbitbrush, sticky leaved rabbitbrush, and narrow leaved rabbitbrush) (Niles and Leary 2007, p. 19). It is unknown which of these subspecies of *C. viscidiflorus* are used as a larval host by Spring Mountains acastus checkerspot butterfly. Of butterfly host plants described by Weiss *et al.* (1997, Figure 4), *Chrysothamnus viscidiflorus* tends to be found in areas with the lowest percentages of tree canopy cover (mean of 17 percent) compared to other host plant species.

Ericameria nauseosa (= *Chrysothamnus nauseosus,* rubber rabbitbrush) also is suspected of being a larval host plant (Weiss *et al.* 1997, p. 6). Boyd and Austin (1999, pp. 20–21) attempted to feed *E. nauseosa* to Spring Mountains acastus checkerspot larvae unsuccessfully and reported that their results were inconclusive. However, they reported that other subspecies of sagebrush checkerspot butterflies used *Acamptopappus* sp. (goldenhead) and *Xylorhiza* sp. (woodyaster) as larval host plants (Austin and Austin 1980, as cited in Boyd and Austin 1999, p. 21).

Clusters of eggs are laid on the underside of host leaves and sometimes on flower buds (Scott 1986, p. 307). After the eggs hatch, the young larvae cluster together on leaves or flowers (Scott 1986, p. 307). Similar to other members of the subfamily Nymphalinae and closely related subspecies, Spring Mountains acastus checkerspot larvae likely hibernate during the winter and may diapause [a period of arrested growth or reduced physiological activity, commonly induced by a seasonal change in photoperiod (*i.e.,* day-length)] for many months or years (Scott 1986, pp. 27, 307).

Weiss *et al.* (1997, p. 2) indicated that butterfly populations are highly dynamic, and from year to year, butterfly distributions can be highly variable. Butterflies may be restricted to moist and cool habitats during dry, warm periods, potentially expanding their distribution during periods marked by cooler and moister conditions (Weiss *et al.* 1997, pp. 2–3). Some species, such as the Spring Mountains acastus checkerspot butterfly, may exist as a metapopulation within the Spring Mountains (Weiss *et al.* 1997, p. 3). If this is the case, maintenance of dispersal corridors and unoccupied habitats is an important management consideration (Weiss *et al.* 1997, p. 3).

The Spring Mountains acastus checkerspot butterfly occurs throughout the Spring Mountains and has been observed in 17 areas (Table 1). However, the number of occupied areas reported in past studies varies (12 occupied areas

were reported in Boyd and Austin 1999, p. 20) based on how observations are spatially grouped. Four of these areas (Trough Spring, Kyle Canyon, Griffith Peak Trail/Harris Spring Road/Harris Mountain Road, and Potosi Mountain/Mt. Potosi/Boy Scout Camp) are referred to interchangeably as colonies or population sites (Boyd & Austin 1999, pp. 9, 20–21; Boyd and Austin 2002, pp. 5, 13; Boyd 2004, pp. 2–3). Currently, only four colonies are known to exist. However, the increased existence of incidental sighting areas and the potential subsequent dispersal of individuals may indicate the presence of additional unknown colonies (Boyd and Austin 1999, pp. 60–61; Boyd *et al.* 2000, p. 10) (Table 1).

TABLE 1—AREAS WHERE SPRING MOUNTAINS ACASTUS CHECKERSPOT OBSERVATIONS HAVE BEEN DOCUMENTED

[Areas ordered to begin with the most northern and end with the most southern]

Observation area	First year observed
Mt. Stirling	1983.
Big Timber Spring	1995 or before.
Wheeler Pass Road	1987.
Trough Spring*	2001.
McFarland Spring/Whisky Spring/Camp Bonanza	2003.
Willow Spring/Willow Creek	1979.
Clark Canyon	1994.
Foxtail Canyon	1998.
Deer Creek & Picnic Area	1965.
Deer Creek Road (Telephone Canyon side)	1981 or 87.
Kyle Canyon—lower	1996 or before.
Kyle Canyon—middle*	1950.
Kyle Canyon—upper	1987.
Griffith Peak Trail/Harris Spring Road/Harris Mountain Road*	1990.
Coal Spring	1992.
Switchback Spring	2003.
Potosi Mountain/Mt. Potosi/Boy Scout Camp*	1995.

*Asterisk indicates a colony. Colonies are isolated populations (Scott 1986, p. 108) based on mate locating behavior (Boyd and Austin 2002, p. 5; Boyd 2009, p. 1) of one or more males observed over a period of time and represent more than one incidental observation or sighting.

Sources: Weiss et al. 1995, pp. 4 and 19; Weiss et al. 1997, pp. 6–7, 47; Boyd and Austin 1999, pp. 19–21; Boyd 2004, pp. 2–3; Nevada Natural Heritage Program 2009.

A colony is "a local, isolated population" (Scott 1986, p. 108). Past researchers defined colonies of Spring Mountains acastus checkerspot butterflies based on the mate locating behavior of males, also referred to as mate locating sites (Boyd and Austin 2002, p. 5; Boyd 2009, p. 1). The remaining 13 areas are referred to as incidental observations or sighting areas (Boyd and Austin 2001, p. 2; Boyd and Austin 2002, p. 3; Boyd 2004, p. 3), where intermittent observations of a few butterflies were recorded at a location. The areas where the Spring Mountains acastus checkerspot butterfly has been observed in a colony or sighting area represent the overall known population of the subspecies.

The largest known colony occurs at Griffith Peak Trail/Harris Spring Road/Harris Mountain Road, and was first documented as a sighting area in 1990 and later described as a potential colony in 1999 (Boyd and Austin 1999, p. 20). The Trough Spring colony was first identified in 2001 (Boyd and Austin 2002, p. 5). Boyd (2004, p. 3) stated that a single male observed at Willow Spring/Willow Creek in 2003 may have dispersed from Trough Spring or another unknown colony, due to its not being sighted in the area since the 1980s. The Spring Mountains acastus checkerspot butterfly was first documented at Potosi Mountain/Mt. Potosi/Boy Scout Camp in 1995 (Weiss *et al.* 1995, p. 6), and was described as a colony for the first time in 2000 (Boyd *et al.* 2000a, p. 4).

DataSmiths (2007, p. 17) concluded that absence of adults at a site does not necessarily equate to ephemeral occupation or extirpation. Observations in areas reported for the Spring Mountains acastus checkerspot butterfly illustrate this. Boyd et al. (2000a, p. 4) searched 17 areas for the Spring Mountains acastus checkerspot butterfly in 1999; these 17 areas consisted of 8 historical and 9 potential sites. Spring Mountains acastus checkerspot butterflies were observed at five of the eight historical sites visited and two of these were described as potential new colonies. In later reports of surveys occurring in 2003, the Spring Mountains acastus checkerspot butterfly was observed again in the Willow Spring/Willow Creek area (Boyd 2004, pp. 2–3), where it was not observed during surveys in 1999 (Boyd and Austin 1999, p. 98–Table 7). Similarly, in 2003, the Spring Mountains acastus checkerspot butterfly also was observed in the McFarland Spring/Whisky Spring/Camp Bonanza area for the first time (Boyd 2004, p. 2), even though it was not observed there during previous surveys in 1998 (Boyd and Austin 1999, p. 104–Table 12). These examples demonstrate that not seeing individuals at a site during surveys does not necessarily equate with extirpation because adult surveys will not detect diapausing (in a physiological state of dormancy) larvae, and short adult flight periods coupled with low numbers may drastically reduce the likelihood of observing Spring Mountains acastus checkerspot butterflies.

Yearly population variation of the Spring Mountains acastus checkerspot butterfly also is expressed by variation in the numbers of observed individuals during repeat surveys at the same location (Table 2). At the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road site, surveys from 2000 and 2001 revealed that the highest total number of individuals observed on a single day increased from 19 to 104. In 2003, the highest number observed on a single day at the same site decreased to 27. In a 2006 interview with the petitioner, Boyd reported that the Spring Mountains acastus checkerspot butterfly had "done better" than other endemic species and had "good numbers" at Griffith Peak Trail/Harris Spring Road/Harris Mountain Road (Boyd 2006, pers. comm.), as well as at

Potosi Mountain/Mt. Potosi/Boy Scout Camp (Boyd 2006, p. 2). At locations where it was observed in 2006, the petition states that the butterfly appeared to be in "appropriate" numbers (Boyd 2006, p. 2). These observations support the conclusions of Weiss *et al.* (1997, p. 2) of highly dynamic butterfly populations where observations may occur periodically throughout a species' range, and populations at colony sites may fluctuate as indicated by monitoring counts.

TABLE 2—SUMMARY OF MONITORING RESULTS OF SPRING MOUNTAINS ACASTUS CHECKERSPOT BUTTERFLY AT THREE COLONY SITES

Year	1999	2000	2001	2002	2003	2006	2007	2008
Kyle Canyon (middle):								
Highest #/day	5	6	8	6	7	4	1	4.
Highest # male/day	4	6	8	6	7	4	1	4.
Highest # female/day	1	1	1	0	1	0	0	0.
# Visits	11	9	6	4	4	1	6	8.
Peak date(s)	June 19 ..	June 15 & 30.	June 18 ..	June 24 ..	June 10 ..	June 21 ..	June 13 & 21.	June 24.
Griffith Peak Trail/Harris Spring Road/Harris Mountain Road:								
Highest #/day		19	104	50	27.			
Highest # male/day		12	78	43	17.			
Highest # female/day		5	26	9	10.			
# Visits		9	5	5	4.			
Peak date		June 11 ..	June 18 ..	June 20 ..	June 29.			
Trough Spring:								
Highest #/day				20	41.			
Highest # male/day				18	40.			
Highest # female/day				7	3.			
# Visits				3	5.			
Peak date				June 18 ..	June 1.			

Sources: (Boyd 2004, p. 8; Jones and Stokes 2007a, p. 4; Jones and Stokes 2007b, p. 3; Kingsley 2008, p. 3).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat may be significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that substantial information has been presented suggesting that listing may be warranted. The information should contain evidence or the reasonable extrapolation that any factor(s) may be an operative threat that acts on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding the threats to the Spring Mountains acastus checkerspot butterfly, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

For Factors A and E, we provide a discussion of our evaluation for each of the four known colonies. In addition, for Factor A, we discuss threats as they relate to all colonies. For Factors B, C, and D, we provide a discussion of our evaluation for the entire subspecies.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition Concerning All Sites

The petition states that the overall numbers of all "covered" butterfly species in the Spring Mountains are declining, as seen with *Plebejus* (= *Icaricia) shasta charlestonensis* (Mt. Charleston blue butterfly). Specifically, the petition states that declines became apparent by 2005 and were exacerbated during the 2006, 2007, and 2008 seasons (Boyd 2009, p. 2). No data were reported for the 2009 season.

In addition, the petition noted several conservation agreements or plans exist to conserve the subspecies; however, few of the obligations documented in these agreements and plans have been met. The petitioner also states that monitoring requirements outlined in these agreements or plans were abandoned after 2003 (Boyd 2009, pp. 1–2).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning All Sites

Between 1998 and 2002, butterfly monitoring occurred throughout the Spring Mountains (Boyd and Austin 1999, pp. 1–77; Boyd *et al.* 2000a, pp. 1–24; Boyd *et al.* 2000b, pp. 1–8; Boyd and Austin 2001, pp. 1–15; Boyd and

Austin 2002, pp. 1–15; Dewberry *et al.* 2002, pp. 1–16; Boyd 2004, pp. 1–10). Butterfly numbers fluctuated between and within sites during this time (see Table 2 above). Many unknown elements exist pertaining to the petitioner's site visits including: (1) Survey protocol standards, (2) number of visits, (3) timing of visits, and (4) weather conditions during the visits. Since 2003, inventory efforts primarily have occurred where proposed activities may affect the subspecies (DataSmiths 2007, pp. 1–31; Forest Service 2007a, pp. 1–9; Forest Service 2007b, pp. 1–57; Jones and Stokes 2007a pp. 1–73; Jones and Stokes pp. 2007b 1–50; Kingsley 2008, pp. 1–18). Such project-specific monitoring assists in determining potential project impacts. Monitoring for populations and habitats of Spring Mountains acastus checkerspot butterfly has occurred purposefully, but intermittently, with different levels of effort, at various locations throughout its range. These differences and inconsistencies in monitoring make it difficult to determine the cause-and-effect relationships associated with activities that may affect the Spring Mountains acastus checkerspot butterfly (see Factor E discussion below for information on butterfly population trends in general).

The Spring Mountains acastus checkerspot butterfly is included in a 1998 Conservation Agreement for the Spring Mountains National Recreation Area (Conservation Agreement) to facilitate cooperation among the parties (U.S. Forest Service, U.S. Fish and Wildlife Service, and State of Nevada Department of Conservation and Natural Resources) in providing long-term protection for the rare and sensitive flora and fauna of the Spring Mountains (Forest Service 1998). The Conservation Agreement describes voluntary conservation actions (described below) for the butterfly on lands within the Forest Service's jurisdiction (Forest Service 1998, pp. 44–49); these voluntary conservation actions were intended to protect the subspecies and its habitat. Those actions include research, inventory, and monitoring. The petition states that very few of the conservation actions in the Conservation Agreement have been completed and that monitoring of sites was abandoned in 2003 (Boyd 2009, p. 2). The conservation actions outlined in the Conservation Agreement were to be carried out within a 5-year period between 1998 and 2002 (Forest Service 1998, p. 28). Between 1998 and 2002, butterfly monitoring occurred throughout the Spring Mountains (Boyd and Austin 1999; Boyd *et al.* 2000a; Boyd *et al.* 2000b; Boyd and Austin 2001; Boyd and Austin 2002; Dewberry *et al.* 2002; Boyd 2004). The frequency, intensity, and extent of monitoring have varied since 2003.

The Spring Mountains acastus checkerspot butterfly is a covered species under the Clark County Multiple Species Habitat Conservation Plan (MSHCP). The Clark County MSHCP identifies two goals for the Spring Mountains acastus checkerspot: (a) "Maintain stable or increasing population numbers and host and larval plant species"; and (b) "No net unmitigated loss of larval host plant or nectar plant species habitat" (RECON 2000a, Table 2.5, pp. 2–154; RECON 2000b, pp. B162–B164). The Forest Service is one of several signatories on the Implementing Agreement for the Clark County MSHCP because many of the activities from the 1998 Conservation Agreement were incorporated into the MSHCP. Primarily, activities undertaken by the Forest Service focused on conducting surveys and monitoring for butterflies. Although the Forest Service, Clark County, and the Service contracted some surveys and monitoring (see above), a butterfly monitoring plan was not fully implemented. The lack of inventory or monitoring does not directly correlate to any threat to the Spring Mountains acastus checkerspot butterfly or its habitat. However, monitoring population status may assist with identifying potential responses to threats.

In 2004, the Forest Service and the Service entered into a voluntary memorandum of agreement (MOA) to establish an interagency commitment to early communication, coordination, and conferencing to guide project development on Forest Service lands that provide habitat for the Spring Mountains acastus checkerspot butterfly (Forest Service and Service 2004, p. 1). This MOA is intended to ensure that forest activities are designed to reduce impacts to listed species under conservation agreements or habitat conservation plans (Forest Service and Service 2004, p. 4).

In 2007, a survey protocol was prepared to survey or inventory butterflies of concern at sites subject to Forest Service management (Forest Service *et al.* 2007, p. 1). The butterfly inventory techniques, of assessing habitat and walking survey transects, were utilized to maximize the possibility of encountering targeted adult butterflies (Forest Service *et al.* 2007, p. 1). Monitoring of the Spring Mountains acastus checkerspot butterfly has occurred where activities may potentially affect the subspecies and its habitat (e.g., DataSmiths 2007; Forest Service 2007a; Forest Service 2007b;Jones and Stokes 2007a; Jones and Stokes 2007b; Kingsley 2008), but it is unclear which conservation actions have taken place since 2003.

Information Provided in the Petition Concerning the Kyle Canyon (Middle) Colony Site

The petition notes that when this site has been surveyed, adults of both sexes of the Spring Mountains acastus checkerspot butterfly are consistently present, but that the numbers of individuals found are low (Boyd 2009, p. 3). The petitioners assert that threats at the Kyle Canyon (middle) colony include highway modifications (expansions, grading, and wash realignments), power line maintenance, fuels reduction or treatment projects, and equestrian and vehicle traffic (Boyd 2009, p. 3). The petition also notes (Boyd 2009, p. 3) plans for a large Forest Service visitor's complex at the site of a former golf course, and construction of a hiking trail. The proposed hiking trail was asserted to traverse the length of the breeding site (Boyd 2009, p. 3).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Kyle Canyon (Middle) Colony Site

Information in Service files suggests that this colony site is small relative to the other colonies, but likely stable (see Table 1 above). Individuals have been found every season the site is surveyed, and the numbers of individuals found during surveys are consistently low. The petition states that this population has been declining since the late 1990s, but the data we have available indicate that the numbers at this site are low every year (see Table 2 above).

We have no additional recent information in our files concerning threats from highway modifications (expansions, grading, and wash realignments), power line maintenance, and equestrian and vehicle traffic. Our files contain a 1999 report (Boyd and Austin 1999, p. 59) that lists a number of habitat-related factors that could adversely affect the Spring Mountains acastus checkerspot butterfly in the Kyle Canyon area including grading, sod dumping, large vehicle occurrence as indicated by tracks, and clearing. Neither the 1999 report nor the petition provides any information or supporting references that characterize the scope, immediacy, and intensity of any of these potential stressors.

Our files contain information on both the beneficial and negative impacts of recent fuels reduction projects. Fuels reduction projects are designed to reduce the volume and cover of woody vegetation. Some potential negative impacts of fuels reduction projects include the crushing of larvae, reductions in larval host plants or adult nectar plants, and reductions in the number of male perching or mate location sites. The most recent fuels reduction project is the Spring Mountains National Recreation Area Hazardous Fuels Reduction Project (Forest Service 2007a, pp. 1–9; Forest Service 2007b, pp. 1–57). Design criteria outlined in the environmental assessment for this project (Forest Service 2007b, Appendix B Design Criteria W5, W6, W7, and M1) were developed to address impacts to the Spring Mountains acastus checkerspot and other butterflies included in the Conservation Agreement, and provided for surveys of butterflies and habitat, habitat mapping, abstaining from any host plant removal in core colonies, avoidance of host plants, minimization of disturbance by using manual methods, monitoring during implementation, and post-project monitoring of butterflies and their habitat. The Forest Service began implementation of the Spring Mountains Hazardous Fuels Reduction Project in 2008, including employment of associated design criteria and conservation measures. A monitoring program is underway to assess the impacts and benefits to butterfly host plants.

The information indicates that fuels treatment projects can have short-term, negative impacts to habitat and individuals, or loss of viability (Forest Service 2007a, pp. 18, 22–23). Even though the impact duration is short-term, given the small documented population at the Kyle Canyon (middle) site, any short-term, negative impact could be a threat to this colony (see Table 2 above).

Fuels treatment projects may be beneficial to habitat and individuals by reducing the risk of wildfire in the localized areas where the Spring Mountains acastus checkerspot butterfly occurs. Over the long term, fuels reductions may improve habitat by increasing nectar and host plant availability. Studies of treatments in other areas of piñyon-juniper showed correlated increases of nectar plants, host plants, and butterflies (Koniak 1985, p. 559; Kleintjes *et al.* 2004, pp. 235–236). The one known larval host, green rabbitbrush, re-sprouts or invades vigorously after fires or other disturbances (Koniak 1985, p. 559). The Spring Mountains acastus checkerspot butterfly could benefit from fuels treatment activities after a period of time as the treatments improve nectar or host plant availability.

Information in our files confirms plans for a visitor center and associated trail, but does not indicate that these projects will have a significant negative impact on the Spring Mountains acastus checkerspot butterfly. Design criteria and measures were incorporated into the project, specifically into the design of a hiking trail in or along Kyle Canyon Wash, to prevent and minimize impacts to the Spring Mountains acastus checkerspot butterfly (Forest Service 2009, pp. 4–5). These criteria and measures include employing construction techniques to avoid or minimize temporary disturbance through known Spring Mountains acastus checkerspot butterfly breeding areas, prohibit construction of Kyle Canyon Wash Trail and buried utilities from early May to mid-July (to avoid the butterfly's flight season), erect temporary construction fencing along the proposed construction limits of planned improvements prior to any ground-disturbing activities, require the contractor to contain all construction activities within the approved construction limits, maintain temporary fencing until notified by the Contracting Officer, collect native seed from appropriate larval host and nectar plants and revegetate temporary construction disturbance areas following completion of construction, implement construction dust control measures to minimize impacts to blooming nectar plant populations, reduce off-trail use in documented Spring Mountains acastus checkerspot breeding/mate selection areas, and construct a fence/barrier adjacent to the newly constructed trail in Kyle Canyon Wash. When the project is implemented in 2011, or later, the incorporated design criteria and measures should avoid or limit impacts to the Spring Mountains acastus checkerspot butterfly in Kyle Canyon Wash. Any impacts to the Spring Mountains acastus checkerspot butterfly in Kyle Canyon Wash are anticipated to be minor, and negligible to the overall population of the subspecies at this site.

Information Provided in the Petition Concerning the Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site

The petition asserts that a 2007 fuels reduction project stacked cut waste more than a meter high along and on both sides of the dirt road at this site, effectively blocking all male perching/mate locating sites (Boyd 2009, p. 3).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site

We have no information in our files to dispute or support the assertion that blocking has occurred or could threaten the Spring Mountains acastus checkerspot butterfly at this colony site. We interpret the term "blocked" to mean obstruction of male perching/mate locating sites as a result of these areas being covered by debris. There is no information in our files to determine if, or to what extent, the alleged blocking of male perching sites is still occurring at this site. Though the numbers of sites available for perching by males may be reduced temporarily if cut waste is piled for later treatment (commonly chipping or burning), other sites may be available, as the Spring Mountains acastus checkerspot butterfly has been observed using multiple perch sites during mate locating (Kingsley 2008, pp. 4, 7–8).

As noted above, fuels reduction projects may have a short-term, negative impact by reducing the number of male perching/mate locating sites. The petition provided no population estimates for this colony, nor do we have any information in our files regarding population estimates for this colony. However, the petition states that individuals of both sexes were found at the site in 2006, but no individuals were found during the 2007 flight season (Boyd 2009, p. 3). No surveys have been completed since 2007.

Information Provided in the Petition Concerning the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road Colony Site

The petition states that there is no immediate threat to habitat or range, as a whole, at this site (Boyd 2009, pp. 3–4).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road Colony Site

We have no additional information on threats to the Spring Mountains acastus checkerspot butterfly's habitat or range at this site.

Information Provided in the Petition Concerning the Trough Spring Colony Site

The petition asserts that horses and introduced elk are having negative effects on the Trough Spring colony site (Boyd 2009, p. 4). The petition also indicates that while the site is closed to off-highway vehicle use, violations are not uncommon (Boyd 2009, p. 4). In

addition, the petition states that 20 individuals were found when the site was surveyed in 2002, 41 individuals were found during surveys in 2003, but 0 individuals were found during a 2007 visit to the site (Boyd 2009, p. 4).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Trough Spring Colony Site

We have no information in our files to dispute or support the assertion that the area is used by horses, elk, and off-highway vehicles. However, neither the petition nor any available information in our files provides any information or supporting references that describe the scope, immediacy, and intensity of any of these potential stressors.

During three site visits in 2002, the highest total number of individuals counted was 20. During five site visits in 2003, the highest total number of individuals counted was 41 (see Table 2 above). While the petition notes a single site visit in 2007 where no individuals were found, conducting a single visit during the flight period is not in accordance with standard butterfly monitoring protocol, and is not considered adequate to gauge abundance or derive trends. However, because we have no recent survey data for this site, we cannot rule out the possibility that the 2007 survey result of zero individuals may indicate a downward trend in numbers at this site.

Summary of Factor A

Fuels reduction projects, horses and introduced elk, and off-highway vehicles may negatively affect Spring Mountains acastus checkerspot butterfly individuals and habitat. All of these activities could negatively alter habitat through one or more of the following mechanisms: Crushing larvae, reducing the amounts of larval host plants, reducing the amount of adult nectar plants, and reducing the amount of male perching/mate location sites. Declines in numbers of individuals have been observed at sites where fuels reduction projects (Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site), horses and introduced elk (Trough Spring Colony Site), and off-highway vehicle activities (Trough Spring Colony Site) occur. This provides evidence to suggest that the Spring Mountains acastus checkerspot butterfly may be negatively affected by these activities. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range, specifically because of fuels reduction projects, horses and introduced elk, and off-highway vehicles.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

There was no information provided in the petition regarding the overutilization for commercial, recreational, scientific, or educational purposes being a threat to the Spring Mountains acastus checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

Neither the petition nor information in our files provides any information pertaining to threats under this factor with regard to the Spring Mountains acastus checkerspot butterfly. Therefore, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to the species. However, we will evaluate all factors, including overutilization from commercial, recreational, scientific, or educational purposes, when we conduct the status review.

C. Disease or Predation

Information Provided in the Petition

There was no information provided in the petition regarding disease or predation being a threat to the Spring Mountains acastus checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

Neither the petition nor information in our files provides any information pertaining to disease or predation with regard to the Spring Mountains acastus checkerspot butterfly. Therefore, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that disease or predation poses a threat to the species. However, we will evaluate all factors, including disease and predation, when we conduct the status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

There was no information provided in the petition regarding the inadequacy of existing regulatory mechanisms being a threat to the Spring Mountains acastus checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide any information pertaining to the inadequacy of existing regulatory mechanisms with regard to the Spring Mountains acastus checkerspot butterfly. In addition, the Service files do not provide any information pertaining to the inadequacy of existing regulatory mechanisms for the Spring Mountains acastus checkerspot butterfly. Therefore, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that the inadequacy of existing regulatory mechanisms poses a threat to the species. However, we will evaluate all factors, including the inadequacy of existing regulatory mechanisms, when we conduct the status review.

E. Other Natural or Manmade Factors Affecting the Subspecies' Continued Existence

Information Provided in the Petition Concerning the Kyle Canyon (Middle) Colony Site

The petition (Boyd 2009, p. 3) asserts highway contaminants, road salt, equestrian and vehicle traffic, and increasing abundance of *Medicago* sp., a nonnative alfalfa species, are threats to Spring Mountains acastus checkerspot butterfly at the Kyle Canyon (middle) colony site.

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Kyle Canyon (Middle) Colony Site

We have no information or supporting references that characterize the scope, immediacy, and intensity of any of these potential stressors. However, the small documented population at this site may increase the vulnerability of the Spring Mountains acastus checkerspot butterfly to other potential threats. We will further investigate these potential threats as they pertain to the Spring Mountains acastus checkerspot butterfly during our status review for this subspecies.

Information Provided in the Petition Concerning the Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site

The petition asserts that a protracted drought is adding to the stresses associated with the fuels reduction project at the Potosi Mountain/Mt. Potosi/Boy Scout Camp site (Boyd 2009, p. 3).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site

It has been observed that during drought, butterfly populations may be lower (Ehrlich *et al.* 1980, pp. 101–105; Thomas 1984, p. 344). In 2006, populations of many butterfly species were low throughout southern Nevada, south of the Great Basin, likely as a result of drought conditions (Murphy 2006, p. 3). In 2007, other species of butterflies in the Spring Mountains experienced population declines, and these declines were hypothesized to be a result of drought (Datasmiths 2007, p. 22). While Boyd (2008, p. 2) speculated that populations of other butterfly species may have declined as a result of drought and other factors, population trends of the Spring Mountains acastus checkerspot butterfly were not being specifically monitored. Though populations may be low during some years as a result of drought, checkerspot species (*Chlosyne* sp.) may survive unfavorable weather years by diapausing for 2 or more years (Scott 1986, p. 307). Drought may not be a threat, in and of itself, to the Spring Mountains acastus checkerspot butterfly. However, drought coupled with other factors, such as fuels reduction projects and other manmade stressors, may result in the Spring Mountains acastus checkerspot butterfly being more susceptible to other threats.

Information Provided in the Petition Concerning the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road Colony Site

The petition asserts that disturbance by vehicle and hiking traffic are threats at the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road colony site as a result of direct disturbanceS to the butterflies by vehicles and hikers (Boyd 2009, pp. 3–4). According to the petition, use of the road and trail appears to be increasing, which disturbs the butterflies during the flight period. The petition states that the numbers of individuals found during surveys at this site have continued to decline each year beginning with 104 individuals in 2001, 50 individuals in 2002, 27 individuals in 2003, and 3 individuals in 2007 (Boyd 2009, p. 4). This site has not been visited since 2007.

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road Colony Site

We have no information in our files to support or dispute the assertion that hikers and vehicular traffic are disturbing Spring Mountains acastus checkerspot butterflies at this site. Neither the petition nor any available information in our files provides any information or supporting references that characterize the scope, immediacy, and intensity of any of these potential stressors. Surveys found butterfly numbers fluctuated from 19 individuals in 2000, to 104 individuals in 2001, to 50 individuals in 2002, to 27 individuals in 2003 (see Table 2 above). However, differences and inconsistencies in monitoring make it difficult to interpret survey results. Based on the available information, there appears to be a potential population decline at the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road colony site. The petition states that vehicle and hiking traffic that disturb the butterfly during the flight period may be a threat to the Spring Mountains acastus checkerspot butterfly.

Information Provided in the Petition Concerning the Trough Spring Colony Site

Even though this site is relatively remote and is closed to motorized vehicles, the petition asserts that traffic from off-highway vehicle activity does occur, and is a threat at the Trough Spring site (Boyd 2009, p. 4). The petition also states that 20 individuals were found when the site was surveyed in 2002, and 41 individuals were found during surveys in 2003, but 0 individuals were found during a 2007 site visit conducted during the appropriate time of year (Boyd 2009, p. 4).

Evaluation of Information Provided in the Petition and Available in Service Files Concerning the Trough Spring Colony Site

We have no information or supporting references that characterize the scope, immediacy, and intensity of this potential threat. However, based on the available information, there appears to be a potential recent population decline at the Trough Spring colony site. The petition states that illegal motorized vehicle activity may be a threat to the Spring Mountains acastus checkerspot butterfly at this site.

Summary of Factor E

Based on the available information, there appears to be potential population declines at the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road colony site and the Trough Spring colony sites. The petition states that vehicle and hiking traffic that disturb the butterfly during the flight period may be a threat to the Spring Mountains acastus checkerspot butterfly, and we will further evaluate this in our status review. Information provided by the petition and available in our files suggests that drought may be a potential added stressor to the Spring Mountains acastus checkerspot butterfly at some locations where additional threats occur. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to other natural or manmade factors affecting the subspecies' continued existence, specifically because of vehicle and hiking traffic and drought.

Finding

On the basis of our evaluation of the petition under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Spring Mountains acastus checkerspot butterfly may be warranted. This finding is based on information provided under Factors A and E. We determine that the information provided under Factors B, C, and D is not substantial. The available information indicates fuels reduction projects may have a negative impact on Spring Mountains acastus checkerspot butterfly individuals and habitat. The possible declining trends at the Potosi Mountain/Mt. Potosi/Boy Scout Camp Colony Site indicate that fuels reduction projects may be a threat to the Spring Mountains acastus checkerspot butterfly at this site (Factor A). In addition, potential declining population trends at the Griffith Peak Trail/Harris Spring Road/Harris Mountain Road colony site and the Trough Spring colony site indicate that vehicle and hiking traffic that disturb the butterfly flight period may be a threat to the subspecies (Factor E). Additionally, drought (Factor E) may be an added stressor to the Spring Mountains acastus checkerspot butterfly at some locations where additional threats occur.

Because we have found that the petition presents substantial

information indicating that listing may be warranted, we are initiating a status review to determine whether listing the Spring Mountains acastus checkerspot butterfly under the Act is warranted. All relevant information pertaining to each of the five factors will be fully evaluated in the forthcoming status review.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: March 29, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–8824 Filed 4–12–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 71
Wednesday, April 13, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0040]

Florigene Pty., Ltd.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Altered Color Roses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Florigene Pty., Ltd., seeking a determination of nonregulated status for roses designated as IFD–524Ø1–4 and IFD–529Ø1–9, which have been genetically engineered to produce novel flower color. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether these genetically engineered roses are likely to pose a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before June 13, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0040* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0040.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Availability of Documents: The petition, draft environmental assessment, and plant pest risk assessment are on available on the Regulations.gov Web site (see link above) or on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/08_31501p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/08_31501p_ea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/08_31501p_pra.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 08–315–01p) from Florigene Pty., Ltd. of Victoria, Australia, seeking a determination of nonregulated status for two hybrid rose lines designated as IFD–524Ø1–4 and IFD–529Ø1–9, which have been genetically engineered to produce novel flower color, stating that these rose lines are unlikely to pose a plant pest risk and, therefore, should not be regulated articles under APHIS' regulations in 7 CFR part 340.

As described in the petition, the addition of genes from pansy and wishbone flower produces blue pigments in the rose lines, altering the flower color. Hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 are currently regulated under 7 CFR part 340. Importation and testing of hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 have been conducted under permits issued or notifications acknowledged by APHIS.

Trials conducted under APHIS oversight allowed for evaluation in a typical horticultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data were gathered on multiple parameters and used by the applicant to evaluate phenotypic characteristics and product performance. These data are used by APHIS to determine if the new variety poses a plant pest risk. Florigene has petitioned APHIS to make a determination that hybrid rose lines IFD–524–1–4 and IFD–529–1–9 shall no longer be considered regulated articles under 7 CFR part 340.

In section 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious

agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 are unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Florigene, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 and they would continue to be regulated articles, or (2) grant nonregulated status to hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 in whole.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject hybrid rose lines, and the plant pest risk assessment. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of hybrid rose lines IFD–524Ø1–4 and IFD–529Ø1–9 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of April 2011.

Gregory L. Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–8775 Filed 4–12–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Committee will meet in Stanford, Montana. 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 to hold the first meeting of the newly formed committee.

DATES: The meeting will be held April 29, 2011 and will begin at 7 p.m.

ADDRESSES: The meeting will be held at the Judith Ranger District, located at 109 Central Avenue, Stanford, MT. Written comments should be sent to Ron Wiseman, Lewis and Clark National Forest, 109 Central Avenue, Stanford, Montana 59479. Comments may also be sent via e-mail to *rwiseman@fs.fed.us.*

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 Lewis and Clark National Forest, 109 Central Avenue, Stanford, Montana 59479. Visitors are encouraged to call ahead to (406) 566–2292 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Wiseman, Designated Federal Official, USDA, Lewis and Clark National Forest, 109 Central Avenue, Stanford, MT 59479; (406) 566–2292; E-mail *rwiseman@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 meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Selection of a chairperson by the committee members; (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) 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 meeting.

Dated: April 7, 2011.

Ronald B. Wiseman,

Designated Federal Officer.

[FR Doc. 2011–9006 Filed 4–12–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Oglethorpe Power Corporation: Proposed Biomass Power Plant

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Draft Environmental Impact Statement and Notice of Public Hearing.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), has prepared a Draft Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR part 1794 related to possible financial assistance to Oglethorpe Power Corporation (Oglethorpe) for the construction of a 100 megawatt (MW) biomass plant and related facilities (Proposal) in Warren County, Georgia.

The purpose of the Proposal is to provide a reliable, long-term supply of renewable and sustainable energy at a reasonable cost to meet part of the electric energy needs of Oglethorpe's members. Oglethorpe may request financial assistance in the future from the RUS for the Proposal.

DATES: Written comments on the Draft EIS must be received on or before May 31, 2011. RUS will conduct a public meeting May 5, 2011, from 6 to 8 p.m. at the Warren County Community Service Building, located at: 48 Warren Street, Warrenton, Georgia 30828. The

first half hour of the meeting will be an open house followed by a formal public information and comment meeting with brief presentations on the Draft EIS. Members of the public will have an opportunity to ask questions and provide comments on the Draft EIS. A court reporter will transcribe verbal comments from the formal public comment portion of the meeting.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Draft EIS or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov.*

ADDRESSES: A copy of the Draft EIS may be viewed online at the following Web site: *http://www.usda.gov/rus/water/ees/eis.htm* and at the: Warren County Public Library, 10 Warren Street, Warrenton, Georgia 30828, Phone (706) 465–2656.

SUPPLEMENTARY INFORMATION: Oglethorpe proposes to own, operate, and maintain the Proposal in Warren County, Georgia. The purpose of the Proposal is to provide a reliable, long-term supply of renewable and sustainable energy at a reasonable cost to meet part of the electric energy needs of Oglethorpe's members. Three alternatives are evaluated in detail in the Draft EIS; the no action alternative, and the proposed action at two different locations: Warren County (the Proposal) and Appling County (the Alternate). Alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors. The Draft EIS evaluated and eliminated from detailed consideration 8 alternatives for renewable generation, one other generation alternative, demand side management, three alternative sites, two alternatives for cooling, and two alternatives for water supply.

The Proposal would be constructed on an approximately 343-acre site located three-fourths mile east of the city limit of Warrenton. The tallest structure would be the stack, with a maximum estimated height of approximately 220 feet. The construction schedule of the Proposal is currently unknown.

A Notice of Intent to Prepare an EIS and Hold a Scoping Meeting was published in the **Federal Register** at 74 FR 30520, on June 26, 2009, and local newspapers. The scoping meeting for the EIS was held in the project area on July 9, 2009, and public comments were accepted from June 26, 2009, through July 27, 2009. RUS issued a Scoping Report in March 2010.

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, "Protection of Historic Properties" (36 CFR part 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its' responsibilities to solicit and consider the views of the public during Section 106 review. Any party wishing to participate more directly with RUS as a "consulting party" in Section 106 review may submit a written request to the RUS contact provided in this notice. Questions and comments should be sent to RUS at the mailing or e-mail addresses provided in this Notice. RUS will accept comments on the Draft EIS in writing by May 31, 2011 to ensure that they are considered in the Final EIS. Once completed, a public notice announcing the availability of the final EIS will be published in the **Federal Register** and local newspapers. Subsequent to a 30-day public review period of the Final EIS and resolution of any additional comments, RUS will then issue and publish a Record of Decision.

Because the Proposal may involve impacts to wetlands, this Notice of Availability also serves as a notice of potential impacts to wetlands. In accordance with Executive Order 11990, the Draft EIS includes a wetland assessment and statement of no practicable alternatives to proposed impacts to wetlands.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as promulgated in RUS' Environmental Policies and Procedures (7 CFR part 1794).

Nivin Elgohary,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 2011–8779 Filed 4–12–11; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Louisiana Advisory Committee to the Commission will convene on Tuesday, May 10, 2011 at 2 p.m. and adjourn at approximately 5:15 p.m. at Southern University Law Center, Chancellor's Conference Room, 2nd Floor, 1 Roosevelt Steptoe Dr., Baton Rouge, LA 70813. The purpose of the meeting is to conduct a public briefing and planning meeting to identify a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 3, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 7, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–8834 Filed 4–12–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting of Sea Turtle Entanglements in Fixed Gear Fisheries.

OMB Control Number: 0648–0496.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection with revisions).

Number of Respondents: 59.

Average Hours per Response: Telephone calls and written reports, 1 hour; interviews, 30 minutes.

Burden Hours: 99.

Needs and Uses: This notice is for extension, with revisions, of a current information collection.

This collection of information involves sea turtles becoming accidentally entangled in active or discarded fixed fishing gear or marine debris. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. National Marine Fisheries Service (NMFS) Northeast Region (Maine to Virginia) has established the Sea Turtle Disentanglement Network to promote reporting and increase successful disentanglement of sea turtles. This Network is made up of sea turtle stranding network organizations, as well as federal, state, and municipal agencies. NMFS relies on the Network and on opportunistic reports from fishermen and recreational boaters for information about entangled turtles. The information provided will help NMFS better assess the threat of sea turtle entanglement in vertical line from fixed gear fisheries (lobster, whelk/conch, crab, fish trap, gill net), discarded gear and marine debris. Our understanding of the prevalence and nature of sea turtle entanglement in fixed gear fisheries is necessary to ensure sea turtles are being conserved and protected, as mandated by the Endangered Species Act of 1973, as amended (ESA).

Affected Public: Individuals or households; not for profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: April 8, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8828 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Bering Sea & Aleutian Islands (BSAI) Crab Economic Data Reports.

OMB Control Number: 0648–0518.

Form Number(s): NA.

Type of Request: Regular submission (renewal with revisions of a current information collection).

Number of Respondents: 132.

Average Hours per Response: Catcher vessel and catcher/processor economic data reports (EDRs), 37 hours; stationary floating processor and shoreside processor EDRs, 48 hours; EDR certifications only, 1 hour; verification of data, 8 hours.

Burden Hours: 4,534.

Needs and Uses: The National Marine Fisheries Service (NMFS) manages the crab fisheries in the waters off the coast of Alaska under the Fishery Management Plan (FMP) for the Bering Sea and Aleutian Islands (BSAI) Crab. The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) mandated the Secretary of Commerce to implement the Crab Rationalization Program (CR Program) for the BSAI Management Area (BSAI) crab fisheries. The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities and monitors the "economic stability for harvesters, processors, and coastal communities." The Magnuson-Stevens Act provides specific guidance on the CR Program's mandatory EDR used to assess the efficacy of the CR Program. Data from the EDR will directly contribute to ongoing evaluation of potential anti-trust and anti-competitive practices in the crab industry.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: April 8, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–8830 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty Administrative Review

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

ACTION: Notice.

SUMMARY: On September 29, 2010, the Department of Commerce ("Department") published a notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part for certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2009, through July 31, 2010. The Department may, however, extend the deadline for completion of the preliminary results of an administrative review to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

DATES: *Effective Date:* April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3927 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2010, the Department of Commerce ("Department") published a notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part for certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2009, through July 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 60076 (September 29, 2010). The preliminary results are currently due on May 3, 2011.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results in an administrative review of an antidumping duty order 245 days after the last day of the anniversary month of the order for which the administrative review was requested. The Department may, however, extend the deadline for completion of the preliminary results of an administrative review to 365 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.214(h)(2).

The Department finds that it is not practicable to complete the preliminary results within this time limit. The Department is extending the deadline because it has provided parties additional time to submit surrogate country comments and thus will require additional time to analyze these comments. We are therefore extending the time for the completion of the preliminary results of this review by 120 days to August 31, 2011.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 7, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–8940 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Lori Apodaca, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION: The *Final Determination* in this investigation was published in the **Federal Register** on April 4, 2011.[1] For the *AD Final Determination,* the Department of Commerce ("the Department") assigned an antidumping duty margin of 33.28 percent to the mandatory respondent and an antidumping duty margin of 32.79 percent to 29 separate-rate companies.

Section 772(c)(1)(C) of the Tariff Act of 1930, as amended ("the Act"), provides for an adjustment to the export price and constructed export price to offset any countervailing duties ("CVD") based on export subsidies. Consistent with this mandate, the Department applies an offset to the antidumping ("AD") cash deposit rate equal to the amount of the export subsidy applied to that same party in the CVD investigation. In its *AD Final Determination*, the Department stated that for the individually examined respondent it would reduce the cash deposit requirement by the amount of export subsidies found for the same individually examined AD respondents in the CVD proceeding (*i.e.*, 0.26 percent). Similarly, the Department stated that for the separate-rate respondents it would reduce their cash deposit requirements by the amount of export subsidies included in the All Others rate from the *CVD Final Determination* (*i.e.*, 42.16 percent).[2] However, the provisional measures in the concurrent CVD investigation expired on January 6, 2011. *See* section 703(d) of the Act. Likewise, the provisional measures in the AD investigation will expire on May 11, 2011. *See* section 733(d) of the Act. Thus, for the remainder of the AD provisional measures period, April 4, 2011, (the date of publication of the *AD Final Determination*) until May 11, 2011, no CVD duties will be collected. Because no export subsidy-related duties will be collected during this period, the Department has determined that collecting the full AD cash deposit amounts during this period, without adjusting for the amount of the export subsidies found in the concurrent CVD proceeding, is appropriate.

Therefore, the Department will instruct U.S. Customs and Border Protection ("CBP") to collect the full AD cash deposit amounts specified in the *AD Final Determination*, without adjusting for export subsidies found in the concurrent CVD proceeding, for the period April 4, 2011, until May 11, 2011. Beginning May 11, 2011, and until such time as final measures, if any, are imposed, no cash deposits for estimated AD duties will be collected. In the event that the ITC publishes an affirmative final injury determination in either the AD or CVD proceeding, then appropriate cash deposit instructions will be forwarded to CBP for the imposition of final measures, effective on the date of publication of the ITC's affirmative final injury determination.

This notice is published in accordance with section 777(i) of the Act.

Dated: April 6, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8943 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) ("*AD Final Determination*").

[2] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521, (April 4, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review

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

SUMMARY: On February 1, 2005, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on

certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam").[1] The Department is conducting a new shipper review ("NSR") of the *Order,* covering the period of review ("POR") of February 1, 2010, through July 31, 2010. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. ("Quoc Viet"). Quoc Viet certified that it was the producer and exporter of the subject merchandise upon which the request was based. On October 1, 2010, the Department published a notice of initiation of the NSR of the *Order* for Quoc Viet.[2] On September 28, 2010, the Department issued its original antidumping duty questionnaire to Quoc Viet. Between October 22, 2010, and February 3, 2011, Quoc Viet submitted responses to the original and supplemental sections A, C, D and Importer antidumping duty questionnaires.

On January 4, 2011, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production ("FOP"). On January 31, 2011, Quoc Viet submitted surrogate country comments and surrogate value ("SV") data.[3]

On March 23, 2011, the Department extended the deadline for the preliminary results of this review to April 14, 2011.[4]

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[5] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*) and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[6] None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) ("Order").

[2] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 75 FR 60730 (October 1, 2010).

[3] *See* Quoc Viet's January 31, 2011 submission.

[4] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 16384 (March 23, 2011).

[5] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[6] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009).

Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this NSR, Quoc Viet submitted complete responses to the separate rate section of the Department's NME questionnaire. The evidence submitted by Quoc Viet includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding its operations and selection of management. The evidence provided by Quoc Viet supports a finding of a *de jure* absence of government control over each of its export activities. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over Quoc Viet.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.[7]

In its questionnaire responses, Quoc Viet submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) Quoc Viet sets its own export prices independent of the government and without the approval of a government authority; (2) Quoc Viet retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Quoc Viet has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of either company's use of export revenues. Therefore, the Department preliminarily finds that Quoc Viet has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Quoc Viet in this NSR. We found that the sale by Quoc Viet was made on a *bona fide* basis.[8] Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Quoc Viet, and the company's eligibility for separate rates (*see* Separate Rate Determination section above), we preliminarily determine that Quoc Viet has met the requirement to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results, we are treating Quoc Viet's sale of subject merchandise to the United States as an appropriate transaction for this NSR.

Surrogate Country

When the Department conducts a review of imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Further, pursuant to section 351.408(c)(2) of the Department's regulations, the Department will normally value FOPs in a single country, except for labor. The sources of the surrogate factor values are discussed under the "Normal Value" section below.[9]

As noted above, on January 4, 2011, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing FOPs. On January 31, 2011, the Department received comments from Quoc Viet suggesting that the Department select Bangladesh as the surrogate country, as well as Bangladeshi SV data.[10]

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy ("OP").[11] The OP determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia were at a comparable level of economic development to Vietnam.[12] The Department considers the six countries identified by the OP in its Surrogate Country List as "equally comparable in terms of economic development."[13] Thus, we find that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are all at an economic level of development equally comparable to that of Vietnam. We note that the Surrogate Country List is a non-exhaustive list of economically comparable countries.

[7] *See Silicon Carbide,* 59 FR at 22587; Sparklers, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[8] For more detailed discussion of this issue, see Memorandum to the File, through Scot T. Fullerton, Program Manager, Office IX, from Paul Walker, Case Analyst, "*Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.," dated concurrently with this notice.

[9] *See also* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office IX, "Fourth New Shipper Review of Frozen Warmwater Shrimp from Vietnam: Surrogate Values for the Preliminary Results," dated concurrently with this notice ("SV Memo").

[10] *See* Quoc Viet's January 31, 2011 submission.

[11] *See* Memorandum from Carole Showers, Director, Office of Policy, to Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, "Request for a List of Surrogate Countries for New Shipper Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated December 6, 2010 ("Surrogate Country List").

[12] *Id.*

[13] *Id.*

Quoc Viet submitted evidence that Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia are all significant producers of comparable merchandise.[14] However, while we find that these countries are economically comparable to Vietnam and produce comparable merchandise, we note that the record contains no publicly available SV factor information for Pakistan, India, Sri Lanka, the Philippines or Indonesia.

With regard to Bangladesh, the record contains publicly available surrogate factor value information. Given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data for surrogate valuation purposes.

U.S. Price

For Quoc Viet's export price ("EP") sale, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on cost and freight foreign port price to the first unaffiliated purchaser in the United States. We also deducted foreign inland freight, and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Act. We reviewed the movement expenses incurred in Vietnam by Quoc Viet and found that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on SVs.[15]

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

B. Factor Valuations[16]

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Quoc Viet for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi SVs. In selecting SVs, we considered the quality, specificity and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production, or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[17] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[18] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries.[19] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[20] Lastly, the Department has also excluded imports from Bangladesh into Bangladesh because there is no evidence on the record regarding what these data represent (*e.g.,* re-importations, another category of unspecified imports, or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.[21]

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based SVs or in calculating ME input values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based SVs to value the input.

To value Quoc Viet's raw shrimp input, we used data for Bangladesh from

[14] *See* Quoc Viet's January 31, 2011 submission at Exhibit 1.

[15] *See* SV Memo for details regarding the SVs for movement expenses.

[16] In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results in an antidumping NSR, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of the preliminary results.

[17] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) ("OTCA 1988") at 590.

[18] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *see Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20*; see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results* of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

[20] See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China,* 69 FR 20594 (April 16, 2004).

[21] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

a study conducted by the Network of Aquaculture Centres in Asia-Pacific ("NACA"), an intergovernmental organization affiliated with the United Nation's ("UN") Food and Agricultural Organization ("FAO"). The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.[22] The Department notes that the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for a significant percentage of NV. Moreover, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. The Bangladeshi shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors. The Bangladeshi shrimp values within the NACA study are publicly available, represent a broad-market average, are product-specific, count-size-specific, contemporaneous and represent actual transaction prices.[23]

The Department used UN ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi SV data to value the raw material and packing material inputs that Quoc Viet used to produce the merchandise under review during the POR, except where listed below.[24] For a detailed description of all SVs, *see* SV Memo. The data represents cumulative values for the calendar year 2007, for inputs classified by the Harmonized Commodity Description and Coding System number. As noted above, for each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries, countries that the Department has determined to be countries which subsidized exports (*i.e.,* Indonesia, South Korea, Thailand, and India), imports from unspecified countries and imports from Bangladesh into Bangladesh.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, SVs that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country.[25] However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, SVs were adjusted using the Consumer Price Index ("CPI") rate for Bangladesh, or the WPI for India or Indonesia (for certain SVs where Bangladeshi data could not be obtained), as published in the *International Financial Statistics* of the International Monetary Fund.

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. We relied on the daily exchange rates posted on the Import Administration Web site.[26]

On May 14, 2010, the CAFC in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), found that the regression-based method for calculating wage rates, as stipulated by section 351.408(c)(3) of the Department's regulations, uses data not permitted by the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c)). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing the respondent's reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.

For the preliminary results of this NSR, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to Vietnam, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the SV Memo. The Department calculated a simple average industry-specific wage rate of $1.09 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to Vietnam and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to Vietnam and are significant producers of comparable merchandise: The Philippines, Egypt and Indonesia. For further information on the calculation of the wage rate, *see* SV Memo.

We valued electricity using data from the Bangladesh Ministry of Power, Energy, & Mineral Resources. This information was published on their Power Division's website. We valued water using 2007 data from the Asian Development Bank. We inflated the value using the POR average CPI rate. We valued diesel using data published by the World Bank in "Bangladesh: Transport at a Glance," published in June 2006. We inflated the value using the POR average CPI rate.

To value truck freight and motorcycle freight, we used data published in *2008 Statistical Yearbook of Bangladesh* published by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate. We valued containerization using Indian information previously available on the Import Administration Web site. We inflated the value using the POR average WPI rate. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Bangladesh. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in

[22] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews,* 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

[23] The calculation for shrimp and all other surrogate values listed below may be found in the SV Memo.

[24] This can be accessed online at: *http://www.unstats.un.org/unsd/comtrade/.*

[25] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China,* 69 FR 29509 (May 24, 2004).

[26] *See http://www.trade.gov/ia/, see also* SV Memo.

Doing Business 2011: Bangladesh, published by the World Bank.

We valued the by-product using shell scrap values using a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize that Quoc Viet reported by-products other than shells and that this surrogate value is not from Bangladesh, the primary surrogate country, this information represents the best information on the record and has been used in past case segments.[27] Moreover, we also note that this is the only surrogate value on the record for by-products, and as a consequence, is being used for these preliminary results. We inflated the value using the POR average WPI rate.[28]

To value factory overhead, selling, general and administrative expenses, and profit, we used the simple average of the 2009–2010 financial statement of Apex Foods Limited and the 2008–2009 financial statement of Gemini Seafood Limited, both of which are Bangladeshi shrimp processors.[29]

Preliminary Results of Review

The Department has preliminarily determined that the following dumping margin exists for the period February 1, 2010, through July 31, 2010:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/exporter	Margin
Quoc Viet	de minimis

Disclosure

The Department will disclose to parties of this proceeding the calculation performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations.

Comments

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with section 351.301(c)(1) of the Department's regulations, for the final results of this NSR, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within ten days of the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[30]

In accordance with section 351.309(c)(ii) of the Department's regulations, interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of this NSR. In accordance with section 351.309(d) of the Department's regulations, rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results.[31] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this NSR, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 351.214(i) of the Department's regulations.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this NSR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this NSR. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific (or customer) *ad valorem* duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash-Deposit Requirements

The following cash deposit requirement will be effective upon publication of the final results of this NSR for all shipments of subject merchandise produced and exported from Quoc Viet entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Quoc Viet, the cash deposit rate will be the rate established in the final results of this NSR. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for the specific producer-exporter combination listed above. The cash deposit requirement, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of its responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and section 351.214(h) and 351.221(b)(4) of the Department's regulations.

[27] *See* SV Memo which contains the following memorandum: Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes and Adina Teodorescu, Case Analysts, "Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/00 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01."

[28] *Id.*

[29] *See* SV Memo at Exhibit 8.

[30] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[31] *See* section 351.310(c) of the Department's regulations.

Dated: April 6, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8892 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Meeting to Explore Feasibility of Establishing a NIST/Industry Consortium on Neutron Measurements for Soft Materials Manufacturing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting on June 2–3, 2011 to be held on the NIST campus. The goal of the one-day meeting is to evaluate industry interest in creating a NIST/industry consortium focused on advanced neutron-based probes for soft materials. The goals of such a consortium would include the development of neutron-based measurements that would address critical needs for manufacturers of soft materials such as polymers, complex fluids, and protein-based materials. Advances in neutron-based measurement science are anticipated through the development of sample environments that closely mimic manufacturing processes, measurement methods to probe and analyze complex mixtures, and data analysis models that support routine measurements with high information content. The consortium would be administered by NIST. Consortium research and development would be conducted by NIST staff members along with at least one technical representative from each participating member company. CRADA contributions for participation in the consortium would be on the order of Twenty Thousand ($20,000) per year. The initial term of the consortium is intended to be three years.

DATES: The meeting will take place on June 2–3, 2011 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held on the NIST Gaithersburg campus, 100 Bureau Drive, Gaithersburg, MD 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Ronald L. Jones, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8514, Gaithersburg, MD 20899–8514, USA; Telephone: (301) 975–4624; Fax (301) 975–3928; E-mail: *ronald.jones@nist.gov.*

SUPPLEMENTARY INFORMATION: All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must pre-register by C.O.B May 27, 2011 in order to attend. Please submit your name, e-mail address, and phone number to Teresa Vicente, and you will be provided instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Teresa Vicente's e-mail address *teresa.vicente@nist.gov* and their phone number is (301) 975–3883.

Dated: April 6, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–9009 Filed 4–12–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for the Base Closure and Realignment (BRAC) 2005 Actions at Fort McPherson, GA

AGENCY: Department of the Army, DoD.

ACTION: Record of decision.

SUMMARY: The Department of the Army announces the availability of the ROD, which summarizes the decision on how to implement property disposal in accordance with the Defense Base Closure and Realignment Act of 1990 (the Base Closure Act), Public Law 101–510, as amended, following the closure of Fort McPherson, Georgia.

The Army has decided to implement its preferred alternative of early transfer of surplus federal property to other entities for reuse. Pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations, the Army prepared a Final Environmental Impact Statement (FEIS) that includes the evaluation of the environmental and socioeconomic impacts of disposing of surplus federal property and the implementation by others of reasonable, foreseeable reuse alternatives for the entire property. Under the early transfer alternative, the Army can transfer and dispose of surplus property for redevelopment before environmental remedial actions have been completed. This method of early disposal, allowable under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, would defer the CERCLA covenant requirement to complete all necessary environmental cleanup prior to the transfer of the remediated property. In this way, parcels could become available for redevelopment and reuse sooner under this disposal alternative than under any other. The Governor of Georgia must concur with the deferral request for the surplus federal property at Fort McPherson.

ADDRESSES: To obtain a copy of the ROD contact Mr. Owen Nuttall, Fort McPherson BRAC Environmental Office, Building 714, 1508 Hood Avenue, Fort Gillem, GA 30297–5161; (404) 469–5245 or *owen.nuttall@us.army.mil.* An electronic version of the ROD can be viewed or downloaded at: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Owen Nuttall at (404) 469–5245.

SUPPLEMENTARY INFORMATION: The McPherson Planning Local Redevelopment Authority (MPLRA) reuse plan (Reuse Plan) provides the basis for the development of reasonable and foreseeable reuse scenarios evaluated in the FEIS. The McPherson Implementing Local Redevelopment Authority (MILRA) is the implementation authority for the redevelopment of Fort McPherson and will implement the Reuse Plan. The range of reuse alternatives evaluated in the EIS encompasses reasonably foreseeable variations of the Reuse Plan and the results of this analysis were used by the Army in its decision regarding disposition of the property.

A Memorandum of Agreement (MOA) for the Closure and Disposal of Fort McPherson has been legally executed by the signing of authorized representatives of the Army, the Georgia State Historic Preservation Officer, and the Advisory Council on Historic Preservation. Army obligations fully described in the MOA are considered mitigations required under the National Historic Preservation Act. Specific mitigation measures the Army commits to perform are outlined in the MOA.

Dated: April 7, 2011.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 2011–8814 Filed 4–12–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Notice of Intent To Prepare a Supplemental Environmental Impact Statement for a Proposed 278 Megawatt Circulating Fluidized Bed Electric Generating Unit by East Kentucky Power Cooperative, Inc., in Clark County, KY

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Withdrawal of notice.

SUMMARY: The Louisville District of the U.S. Army Corps of Engineers (Corps) today withdraws its Notice of Intent (74 FR 48236, September 22, 2009) to prepare a Supplemental Environmental Impact Statement (SEIS) for a proposed 278 megawatt circulating fluidized bed electric generating unit by East Kentucky Power Cooperative, Inc. (EKPC), in Clark County, Kentucky. EKPC withdrew its application for a Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act permit to construct the facility permit on December 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hasty, Senior Project Manager, South Section, Regulatory Branch, Louisville District, P.O. Box 59, Louisville, KY 40201–0059. Phone: (502) 315–6676, e-mail: *michael.d.hasty@usace.army.mil.*

SUPPLEMENTARY INFORMATION: EKPC applied for a Department of the Army (DA) permit from the Corps on October 8, 2008. The application requested authorization for unavoidable impacts to jurisdictional waters of the U.S. pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The Proposed Action involved the construction and operation of a 278 megawatt circulating fluidized bed electric generating unit and associated infrastructure at the existing J.K. Smith Power Station in southern Clark County, Kentucky. Other appurtenant features of the Proposed Action included: An approximately one-mile, 345 kV electric transmission line; two (2) beneficial reuse structural fills using coal combustion by-products (CCB); two (2) landfills for the on-site disposal of CCB; an emergency drought water storage reservoir; several soil borrow areas for landfill cover and other site development uses; and a new water intake/outfall structure in the Kentucky River.

The Corps announced the NOI to prepare a SEIS to evaluate the potential effects of the Proposed Action on the environment on September 22, 2009 (74 FR 48236). The Corps also made a Draft SEIS available for comment on April 9, 2010 (75 FR 18166). A Public Hearing was held on June 8, 2010 in Winchester, KY. At the time of EKPC's withdrawal, the Corps was evaluating comments received at the Public Hearing and in response to the NOI in preparation of a Final SEIS. Due to a variety of factors, EKPC withdrew its application for a Department of the Army permit to construct the facility on December 3, 2010.

Dated: April 4, 2011.

Keith A. Landry,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2011–9000 Filed 4–12–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 13, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title of Collection: Baccalaureate and Beyond Longitudinal Study 2008/12 (B&B:08/12) Field Test 2011.

OMB Control Number: 1850–0729.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 3,782.

Total Estimated Annual Burden Hours: 805.

Abstract: This request for OMB approval is to conduct a second follow-up field test for the Baccalaureate and Beyond Longitudinal Study of 2008/2012 (B&B:08/12), from June through October 2011. The primary purpose of the B&B series of studies is to describe the various paths of recent college graduates into employment and additional education. Baseline data for the B&B:08 cohort were collected as part of the National Postsecondary Student Aid Study (NPSAS:08). The first follow-up interview (B&B:08/09) collected information from respondents one year after they received their bachelor's degree; the second follow-up (B&B:08/12) will collect data four years after bachelor's degree receipt. Interview data will be supplemented with a variety of administrative data sources, including the Central Processing System, the National Student Loan Data System, and the National Student Clearinghouse. This request also requests a waiver of the 60-day Federal Register notice for the full-scale data collection package. Full-scale data collection will take place from July 2012 through March 2013.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by

selecting the "Browse Pending Collections" link and by clicking on link number 4416. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8876 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 13, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 7, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Student Assistance General Provisions—Subpart A—General.

OMB Control Number: 1845–0107.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 3,551,702.

Total Estimated Number of Annual Burden Hours: 1,270,478.

Abstract: The final regulations (668.6(b)) require the following disclosures to prospective students in a gainful employment program: The name and Standard Occupational Classification (SOC) code for each occupational training program and links to the Department of Labor's O-Net site to obtain occupation profile data using a SOC code, or a representative sample of SOC codes for graduates of its program; information about on-time graduation rates for students completing the program; the total amount of tuition and fees charged for completing the program within the normal time it takes to complete the course requirements as published in the institution's catalog, along with the typical costs for books and supplies, and the cost of room and board, if applicable, including providing a Web link or access to the program cost information the institution makes available to all enrolled and prospective students under section 668.43(a). Beginning July 1, 2011, the placement rate as determined under the institution's accrediting agency or State requirements, or the placement rate that will be determined in the future by the National Center for Education Statistics, must be reported by the institution. In addition, the institution must disclose the median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information about the program provided by the Secretary. The institution must identify separately the median title IV, Higher Education Act loan debt and the median loan debt from the private education loan debt and institutional financing plans.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4561. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8881 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 13, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 7, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Institute of Education Sciences

Type of Review: NEW.

Title of Collection: Study of the Distribution of Teacher Effectiveness.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once; On Occasion.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 213.

Total Estimated Annual Burden Hours: 1,217.

Abstract: Title II, Part A, the Improving Teacher State Formula Grants program is the primary federal funding under the Elementary and Secondary Education Act to support a high quality teacher in every classroom. The American Recovery and Reinvestment Act (ARRA) supports reform in four key areas including increasing teacher effectiveness and promoting the equitable distribution of effective teachers. Therefore, this study describes the distribution of teacher quality within districts over time and any changes in that distribution associated with district strategies to promote an equitable distribution of high quality teachers.

This study will provide information over time about the distribution of teacher quality and will document district efforts to promote teacher equity within a select number of districts. The research questions are:

- What is the distribution of teacher quality across schools within districts?
- What strategies and policies are districts promoting to address inequitable distribution of teacher quality? How these strategies/policies are enacted (*e.g.* strategy determination, goals and objectives, theory of action, features, administration, necessary resources, and challenges to administration, intended duration)?
- What is the relationship between the district policies/strategies and the distribution of teacher quality?

The study will be conducted in up to 30 geographically-dispersed school districts. The study will document the distribution of teacher quality, within participating districts, using teacher value-added analyses. The study will also describe changes in the distribution of teacher quality across the outcomes years 2010–2011 through 2012–2013. Data collection will include student achievement obtained from administrative records, annual semi-structured district leadership interviews about district strategies and policies to address inequitable distribution of teacher quality, and district administrative records/personnel data.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4484. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8878 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 13, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

Dated: April 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Application for Grants under the Predominantly Black Institutions Program.

OMB Control Number: 1840–0797.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 40.

Total Estimated Annual Burden Hours: 1,400.

Abstract: The Predominantly Black Institutions (PBI) Program is authorized under Title III, Part F of the Higher Education Act of 1965, as amended (HEA). The PBI Program makes grant awards to eligible colleges and universities to support the strengthening of PBIs to carry out programs in the following areas: Science, technology, engineering, or mathematics; health education; internationalization or globalization; teacher preparation; or improving the educational outcomes of African American males. Grants support the establishment or strengthening of such programs that are designed to increase the institutions capacity to prepare students for instruction in the above noted fields. Grants are awarded competitively. This information collection is necessary to comply with Title III, Part F of the HEA.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4481. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8877 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.325D, 84.325K, and 84.325T.

Note: This notice invites applications for three separate competitions. For key dates, contact person information, and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

DATES:

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically-based research and experience, to be successful in serving those children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA No.
Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel.	84.325D
Personnel Preparation in Special Education, Early Intervention, and Related Services.	84.325K
Special Education Preservice Program Improvement Grants.	84.325T

Absolute Priorities: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applications from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

The priorities are:

Absolute Priority 1—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel (84.325D). Background:

There continues to be a persistent need for special education, early intervention, and related services personnel who are prepared at the doctoral and postdoctoral levels to fill faculty and research positions (Smith, Pion, & Tyler, 2004; Smith, Robb, West and Tyler, 2010; Woods & Snyder, 2009). Further, according to Lashley & Boscardin (2003), there is a need for personnel who are prepared at the graduate level (*i.e.,* masters, education specialist, and doctoral degrees, depending on State certification requirements) to fill special education and early intervention administrator positions.

Federal support is needed to increase the supply of these personnel and ensure that they have the necessary knowledge and skills to assume special education, early intervention, and related services leadership positions in universities, State educational agencies (SEAs), State lead agencies (State LAs), local educational agencies (LEAs), local lead agencies (local LAs), schools, or programs. Critical competencies for special education, early intervention, and related services leadership personnel vary depending on the type of personnel preparation program; however, these competencies often include teaching skills, administrative skills,[1] and research skills as well as

[1] For an example of standards for administrative skills, see the performance-based standards for a special education administrator developed by the

Continued

current knowledge of effective interventions that improve academic and functional outcomes for children with disabilities, including high-need children with disabilities. For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, (7) are English learners, (8) are pregnant or parenting teenagers, (9) are new immigrants, (10) are migrant, or (11) are not on track to being college- or career-ready by graduation.

Priority:

The purpose of the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel priority is to increase the quantity of special education, early intervention, and related services personnel who have been prepared at the graduate and advanced graduate levels, and who are well-qualified for, and can effectively carry out, leadership positions in universities, SEAs, State LAs, LEAs, local LAs, schools, or programs. This priority supports two types of programs that prepare leadership personnel:

Type A programs are designed to prepare, at the advanced graduate level, higher education faculty and researchers in early intervention, special education, or related services. Type A programs culminate in a doctoral degree or provide postdoctoral learning opportunities.

Note: Preparation that leads to clinical doctoral degrees in related services (*e.g.,* a Doctor of Audiology (AuD) degree or Doctor of Physical Therapy (DPT) degree) are not included as part of this priority. Preparation programs that lead to a clinical doctoral degree are eligible to apply for funding under the Personnel Preparation in Special Education, Early Intervention, and Related Services priority (CFDA 84.325K) announced elsewhere in this notice.

Type B programs are designed to prepare, at the graduate or advanced graduate levels, special education or early intervention administrators to work in SEAs, State LAs, LEAs, local LAs, schools, or programs. The applicant, based on State certification requirements for some positions, can determine whether the proposed Type B program prepares personnel for one or more administrative position(s). Type B programs prepare personnel for positions such as SEA special education administrators, LEA special education directors or regional directors, school-based special education directors, preschool coordinators, and early intervention coordinators. Type B programs culminate in a master's, education specialist, or doctoral degree. The Office of Special Education Programs (OSEP) intends to fund in FY 2011 at least three high-quality applications proposing Type B programs and may fund these applications out of rank order.

Note: The preparation of school principals is not included as part of this priority.

Note: Applicants must identify the specific program type, A or B, for which they are applying for funding as part of the competition title on the application cover sheet (SF form 424, item 15). Applicants may not submit the same proposal for more than one program type.

To be considered for funding under the Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel absolute priority, both Type A and Type B program applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

These requirements are as follows:

(a) Demonstrate, in the narrative section of the application, under "Quality of Project Services," how—

(1) The program prepares leadership personnel to address the specialized needs of high-need children with disabilities (as defined in the background statement for this absolute priority). To address the needs of this population, the proposed program must—

(i) Identify the competencies needed by leadership personnel to either effectively teach others how to implement, or directly administer or conduct further research on, programs or interventions that improve the academic or functional outcomes of high-need children with disabilities; and

(ii) Prepare leadership personnel to apply these competencies in a variety of settings, including in high-need LEAs,[2] high-poverty schools,[3] and low-performing schools, including persistently lowest-achieving schools.[4]

(2) All relevant coursework for the proposed program reflects current research and pedagogy, as appropriate, on—

(i) Participation and achievement in the general education curriculum and improved outcomes for all children with disabilities, including high-need children with disabilities;

(ii) The provision of early intervention services in natural environments to improve outcomes for infants and toddlers with disabilities, including high-need children with disabilities and their families; and

(iii) The competencies needed to work in high-need LEAs, high-poverty

Council for Exceptional Children (CEC) at: *http://www2.astate.edu/dotAsset/118756.pdf.*

[2] For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[3] For the purposes of this priority, the term *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010-4/121510b.html*).

[4] For purposes of this priority, the term *persistently lowest-achieving schools* is defined according to the final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which were published in the **Federal Register** on October 28, 2010 (75 FR 66363). According to Section I.A.3 of these requirements, the term "persistently lowest-achieving schools" means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) 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

(ii) 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

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) 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

(ii) 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.

(b) To identify the 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 number of years in the "all students" group.

schools, low-performing schools, including persistently lowest-achieving schools, and publically funded preschool programs, including Head Start programs and early intervention programs serving children eligible for services under Part C, located within the geographic boundaries of a high-need LEA.

(3) The program is designed to integrate coursework with practicum opportunities (*e.g.,* interning in a program or school serving high-need children with disabilities) that will enhance the competencies of leadership personnel to effectively—

(i) Serve in a variety of positions, including positions that involve research, personnel preparation, or leadership at the university, SEA, State LA, LEA, local LA, school, or program level;

(ii) Work in a variety of leadership settings, particularly those in high-need LEAs with programs and schools serving high-need children with disabilities;

(iii) Collaborate and work with regular education personnel;

(iv) Incorporate universal design for learning principles [5] into curricula and instructional practice; and

(v) Integrate instructional and assistive technologies into the delivery of services.

(4) The proposed leadership program ensures that scholars [6] are knowledgeable about—

(i) Applicable laws that affect children with disabilities, including IDEA, the Elementary and Secondary Education Act of 1965, as amended (ESEA), and the Head Start Act, as appropriate;

(ii) The requirements for highly qualified teachers under IDEA and the ESEA;

(iii) The strategies that foster collaboration among personnel serving children with disabilities; and

(iv) The collection, analysis, and use of data on early learning outcomes,[7] student achievement,[8] or student growth [9] to improve teaching and learning.

(b) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear, effective plan for evaluating the outcomes of the proposed leadership project. The plan must include a description of how the project will—

(1) Incorporate the use of evaluation methodologies that demonstrate the effectiveness of the proposed program, including its effect on the acquisition of scholar competencies described in the application; and

(2) Objectively collect, analyze, and use these and other formative evaluation data to improve the program on an ongoing basis. In the application, the applicant must clearly describe how the project will report these evaluation results to OSEP in the grantee's annual and final performance reports.

(c) Include, in the application appendix, all course syllabi, in their entirety, for the proposed preparation program and a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance.*

(d) Include, in an application appendix, course syllabi that clearly incorporate research-based curriculum and pedagogy as required under paragraph (a) of this priority, along with the syllabi for all research methods, evaluation methods, or data analysis courses required by the degree program and elective research methods, evaluation methods, or data analysis courses that have been completed by more than one student enrolled in the program in the last four years.

(e) Provide, in the application narrative, a detailed description of the program that includes the sequence of courses offered in the program and a comprehensive curriculum designed to meet program goals and obtain mastery in the following professional domains, as appropriate—

(1) Research methodology;

(2) Personnel preparation;

(3) Policy or professional practice; or

(4) Administration practices or techniques.

(f) Demonstrate in the application narrative the existence of national, State, or regional needs using appropriate and applicable data. The applicant must provide evidence of the need for the leadership personnel they are proposing to prepare.

(g) Certify in the application that the applicant intends that all scholars recruited into the program will graduate from the program by the end of the grant's project period.

(h) Meet the statutory requirements in section 662(e) through 662(h) of IDEA.

(i) Ensure that at least 65 percent of the total requested budget per year will be used for scholar support or provide justification in the application narrative for any designation less than 65 percent. Examples of sufficient justification for proposing less than 65 percent of the budget for scholar support include:

(1) A project servicing rural areas that provides long-distance personnel preparation, and requires Web Masters, adjunct professors, or mentors to operate effectively.

(2) A project that is expanding or adding a new area of emphasis to the program and, as a result of this expansion, needs additional faculty or other resources, such as expert consultants, additional teaching supplies, or equipment that would enhance the program.

Note: Applicants proposing projects that expand or add a new area of emphasis to special education, early intervention, or related services programs must provide, in their applications, data on the need for the

[5] For purposes of this priority, the term *universal design for learning* has the meaning provided for the term under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient" (20 U.S.C. 1003(24)). For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[6] For the purposes of this priority, the term *scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA (see 34 CFR 304.3(g)).

[7] For purposes of this priority, *early learning outcomes* are defined to include information on child development in the areas of physical well-being and motor development, social-emotional development, language and literacy development, and cognition and general knowledge, including early numeracy and early scientific development.

[8] For the purpose of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

[9] For the purposes of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

expansion and information on how these new areas will be sustained once Federal funding ends.

(j) Certify in the application that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship (*e.g.,* as graduate assistants), unless the work is required to complete their personnel preparation program. Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA.

(k) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(l) If the project maintains a Web site, include relevant information and documents in a format that meets government or industry-recognized standards for accessibility.

(m) Submit annual data on each scholar who receives grant support. Applicants are encouraged to visit the Personnel Development Scholar Data Report Web site at: *http://oseppdp.ed.gov* for further information about this data collection requirement. Typically, data collection begins on or around November 1st of each year, and grantees are notified by e-mail about the data collection period for their grant. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following priorities. For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants for Type A or Type B programs that demonstrate an established relationship with one or more high-need LEAs or publically-funded preschool programs, including Head Start programs or early intervention programs serving children eligible for services under Part C of the IDEA, located within the geographic boundaries of a high-need LEA that will provide scholars with a high-quality practicum experience in a high-poverty school, which may include a professional development school, or in a publically-funded preschool or early intervention program.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants for Type B programs that provide a syllabus or syllabi for a new or existing course, or series of courses, that show(s) that the course or courses include or will include: (1) A discussion of applicable research and evaluation findings on the use of data on early learning outcomes, student achievement, or student growth in evaluating the effectiveness of early intervention providers, related services providers, teachers, and principals; (2) methodological and statistical considerations in conducting an evaluation of the effectiveness of these personnel based on early learning outcomes, student achievement, or student growth data; and (3) an opportunity for scholars to review and critique one or more real-world applications of evaluating the effectiveness of early intervention providers, related services providers, teachers, and principals.

Competitive Preference Priority 3: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants for Type A or Type B programs that prepare leadership personnel who will prepare others to work with children, including infants and toddlers, who are deaf or hard of hearing to teach them listening and spoken language skills.

Note: Five is the maximum amount of competitive preference points an applicant can receive. Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priorities they have addressed.

References:

Lashley, C., & Boscardin, M.L. (2003). Special education administration at the crossroads: Availability, licensure, and preparation of special education administrators. Gainesville, FL: Center on Personnel Studies in Special Education, University of Florida. Retrieved February 24, 2010, from *http://www.coe.ufl.edu/copsse/docs/IB–8/1/IB–8.pdf.*

National Council for Accreditation of Teacher Education (2009). What is a professional development school? Retrieved June 29, 2009, from *http://www.ncate.org/public/.*

Smith, D. D., Pion, G. M., & Tyler, N. C. (2004). Leadership personnel in special education: Can persistent shortages be resolved? In A.M. Sorells, H.J., Rieth and P. T. Sindelar (Eds.), *Critical Issues in Special Education: Access, Diversity, and Accountability* (pp. 258–276). New York: Pearson, Allyn & Bacon.

Smith, D. D., Robb, S. M., West, J., & Tyler, N. C. (2010). The changing education landscape: How special education leadership preparation can make a difference for teachers and their students with disabilities. *Teacher Education and Special Education,* 33(1), 25–43.

Wasburn-Moses, L., & Therrien, W.J. (2008). The impact of Leadership Personnel Grants on the doctoral student population in special education. *Teacher Education and Special Education,* 31(2), 1–12.

Woods, J., & Snyder, P. (2009). Interdisciplinary doctoral leadership training in early intervention. *Infants & Young Children,* (22)1, 32–4.

Absolute Priority 2—Personnel Preparation in Special Education, Early Intervention, and Related Services (84.325K).

Background: State demand for fully credentialed early intervention, special education, and related services personnel to serve infants, toddlers, and children with disabilities exceeds the available supply (Bruder, 2004a; Bruder 2004b; McLeskey & Billingsley, 2008; and McLeskey, Tyler & Flippin, 2004). For example, the existing 65 deaf or hard of hearing teacher preparation programs, generating teachers at their current rate, will not be able to adequately address the increasing number of students qualifying for such services. Personnel shortages can negatively impact the quality of services provided to infants, toddlers, and children with disabilities and their families when positions are not filled by fully credentialed personnel (McLeskey *et.al,* 2004).

Personnel preparation programs that prepare personnel to enter the fields of early intervention, special education, and related services with the necessary skills and knowledge to implement evidence-based practices are critical to meet the personnel shortages in the field. Federal support of personnel preparation programs is needed to increase the supply of personnel with the necessary skills and knowledge to successfully serve infants, toddlers, and children with disabilities and their families.

Priority: The purpose of the Personnel Preparation in Special Education, Early Intervention, and Related Services priority is to improve the quality and increase the number of personnel who are fully credentialed to serve children, including infants and toddlers, with disabilities—especially in areas of chronic personnel shortage—by supporting projects that prepare early intervention, special education, and related services personnel at the

associate, baccalaureate, master's, and specialist levels. In order to be eligible under this priority, programs must prepare and support scholars [10] to complete, within the project period of the grant, a degree, State certification, professional license, or State endorsement in early intervention, special education, or a related services field. Programs preparing scholars to be special education paraprofessionals, assistants in related services professions (*e.g.,* physical therapist assistants, occupational therapist assistants), or educational interpreters are also eligible under this priority.

Programs that provide an alternate route to certification or that support dual certification (special education and regular education) for teachers are eligible as well.

To be considered for funding under the Personnel Preparation in Special Education, Early Intervention, and Related Services absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority. These requirements are as follows:

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services," how—

(1) Personnel preparation requirements and required coursework for the proposed program incorporate research-based practices that improve outcomes for children with disabilities (including relevant research citations);

(2) The program is designed to integrate coursework with practicum opportunities that will enhance the competencies of special education personnel to effectively—

(i) Serve and instruct children with disabilities;

(ii) Collaborate and work with regular education personnel;

(iii) Incorporate universal design for learning principles [11] into curricula and instructional practice;

(iv) Integrate instructional and assistive technologies into the delivery of services;

(v) Collect, analyze, and use data on early learning outcomes,[12] student achievement,[13] or student growth [14] in order to improve instructional practices and interventions; and

(vi) Support and work with parents and families of children with disabilities;

(3) The program prepares personnel to address the specialized needs of high-need children with disabilities.

Note: For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, (7) are English learners, (8) are pregnant or parenting teenagers, (9) are new immigrants, (10) are migrant, or (11) are not on track to being college- or career-ready by graduation.

The program prepares personnel to work with this particular population by—

(i) Identifying the competencies needed by early intervention, special education, and related services personnel to work with high-need children with disabilities;

(ii) Preparing personnel to apply these competencies in a variety of settings, including in high-need LEAs,[15] high-poverty schools,[16] low-performing schools, including the persistently lowest-achieving schools,[17] and publically-funded preschool programs, including Head Start programs and early intervention programs serving children eligible for services under Part C, located within the geographic boundaries of a high-need LEA, as appropriate.

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[10] For the purposes of this priority the term *scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA (see 34 CFR 304.3(g)).

[11] For purposes of this priority, the term *universal design for learning* has the meaning provided for the term under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient." (20 U.S.C. 1003(24)) For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[12] For purposes of this priority, *early learning outcomes* are defined to include information on child development in the areas of physical well-being and motor development, social-emotional development, language and literacy development, and cognition and general knowledge, including early numeracy and early scientific development.

[13] For the purpose of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

[14] For the purposes of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

[15] For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[16] For the purposes of this priority, the term *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010–4/121510b.html*).

[17] For purposes of this priority, the term *persistently lowest-achieving schools* is defined according to the final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which were published in the **Federal Register** on October 28, 2010 (75 FR 66363). According to Section I.A.3 of these requirements, the term "persistently lowest-achieving schools" means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) 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

(ii) 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

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) 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

(ii) 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.

(b) To identify the 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 number of years in the "all students" group.

(4) The program is designed to provide extended clinical learning opportunities,[18] field experiences, or supervised practica (such as an additional year), and ongoing high-quality mentoring and induction opportunities for scholars (as defined in 34 CFR 304.3(g));

(5) The preparation program will—

(i) Enable scholars to be highly qualified, in accordance with section 602(10) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 300.18, in the State(s) to be served by the applicant; and

(ii) Ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards; and

(6) The preparation program provides support to scholars through innovative strategies that are designed to enhance scholar retention and success in the program, such as using tutors or mentors or providing extended clinical learning opportunities or other field experiences.

(b) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear, effective plan for evaluating project outcomes. This plan must include a description of how the project will—

(1) Collect and analyze data on scholars' competencies;

(2) Collect and analyze data on the quality of services provided by program graduates, including data on their students' outcomes (*e.g.,* academic, social, emotional, behavioral) and growth; and

(3) Use the results and findings from this evaluation as a basis for improving the program for future scholars. Applicants also must clearly describe how the project will report these evaluation results to OSEP in the grantee's annual and final performance reports.

Note: Under this evaluation requirement, grantees are encouraged—but not required—to engage in data collection activities after the completion of the grant.

(c) Include, in the application appendix, all course syllabi, in their entirety, for the proposed preparation program and a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://www.tadnet.org/model_and_performance.*

(d) Ensure that course syllabi for the preparation program incorporate research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(e) Certify in the application that the applicant intends that all scholars recruited into the program will graduate from the program by the end of the grant's project period.

(f) Certify in the application that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship *(e.g.,* as graduate assistants), unless the work is required to complete their preparation program. Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA.

(g) Meet the statutory requirements contained in section 662(e) through 662(h) of IDEA.

(h) Ensure that at least 65 percent of the total requested budget per year be used for scholar support.

(i) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(j) If the project maintains a Web site, include relevant information and documents in a form that meets government or industry-recognized standards for accessibility.

(k) Submit annual data on each scholar who receives grant support. Applicants are encouraged to visit the Personnel Development Scholar Data Report Web site at *http://oseppdp.ed.gov* for further information about this data collection requirement. Typically, data collection begins on or around November 1st of each year, and grantees are notified by e-mail about the data collection period for their grant. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

Focus Areas: Within this absolute priority, the Secretary intends to support projects under the following five focus areas: (A) Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities; (B) Preparing Personnel to Serve School-Age Children with Low-Incidence Disabilities; (C) Preparing Personnel to Provide Related Services to Children, Including Infants and Toddlers, with Disabilities; (D) Preparing Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities; and (E) Preparing Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities.

Note: Applicants must identify the specific focus area (*i.e.,* A, B, C, D, or E) under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area A: Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities. OSEP intends to fund 9 awards under this focus area. For the purpose of Focus Area A, early intervention personnel are those who are prepared to provide services to infants and toddlers with disabilities ages birth to three, and early childhood personnel are those who are prepared to provide services to children with disabilities ages three through five (in States where the age range is other than ages three through five, we will defer to the State's certification for early childhood). In States where certification in early intervention is combined with certification in early childhood, applicants may propose a combined early intervention and early childhood personnel preparation project under this focus area. We encourage interdisciplinary projects under this focus area. For purposes of this focus area, interdisciplinary projects are projects that implement common core content and practicum experiences across disciplines for early intervention providers or early childhood special educators, and related services personnel to serve infants, toddlers, and preschool-age children with disabilities. Projects preparing only related services personnel to serve infants, toddlers, and preschool-age children with disabilities are *not* eligible under this focus area (see Focus Area C).

Focus Area B: Preparing Personnel to Serve School-Age Children with Low-Incidence Disabilities. OSEP intends to fund 11 awards in this focus area. For the purpose of Focus Area B, personnel who serve children with low-incidence disabilities are special education personnel, including paraprofessionals, prepared to serve school-age children with low-incidence disabilities including visual impairments, hearing impairments, simultaneous vision and hearing impairments, significant intellectual disabilities, orthopedic

[18] For the purposes of this priority, the term *clinical learning opportunities* are a method of instruction for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

impairments, autism, and traumatic brain injury. Programs preparing special education personnel to provide services to visually impaired or blind children that can be appropriately provided in braille must prepare those individuals to provide those services in braille. Projects preparing educational interpreters are eligible under this focus area. Projects preparing other related services, speech and language, or adapted physical education personnel are *not* eligible under this focus area (see Focus Area C). Projects preparing special education, early intervention, or preschool personnel are *not* eligible under this focus area (see Focus Area A).

Focus Area C: Preparing Personnel to Provide Related Services to Children, Including Infants and Toddlers, with Disabilities. OSEP intends to fund 9 awards in this focus area. Programs preparing related services personnel to serve children, including infants and toddlers, with disabilities are eligible within Focus Area C. For the purpose of this focus area, related services include, but are not limited to, psychological services, physical therapy (including therapy provided by personnel prepared at the Doctor of Physical Therapy (DPT) level), adapted physical education, occupational therapy, therapeutic recreation, social work services, counseling services, audiology services (including services provided by personnel prepared at the Doctor of Audiology (DAud) level), and speech and language services. Preparation programs in States where personnel prepared to serve children with speech and language impairments are considered to be special educators are eligible under this focus area. Projects preparing educational interpreters are *not* eligible under this focus area (see Focus Area B).

Focus Area D: Preparing Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities. OSEP intends to fund 10 awards in this focus area. Programs in minority institutions are eligible under Focus Area D if they prepare: (a) Personnel to serve one or more of the following: infants, toddlers, and preschool-age children with disabilities; (b) personnel to serve school-age children with low-incidence disabilities; (c) personnel to provide related services to children, including infants and toddlers, with disabilities; or (d) personnel to provide secondary transition services to school-age children with disabilities. Minority institutions include institutions with a minority enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities. Programs in minority institutions preparing personnel in Focus Areas A, B, C, and E are eligible within Focus Area D. Programs that are preparing high-incidence special education personnel are *not* eligible under this priority (for the purpose of this priority "high-incidence disabilities" refers to learning disabilities, emotional disturbance, or intellectual disabilities). However, programs that are preparing high-incidence special education personnel are eligible under Absolute Priority 3 described elsewhere in this notice.

Note: A project funded under Focus Area D may budget for less than 65 percent, the required percentage, for scholar support if the applicant can provide sufficient justification for any designation less than this required percentage. Sufficient justification for proposing less than 65 percent of the budget for scholar support would include support for activities such as program development, program expansion, or the addition of a new area of emphasis. Some examples of projects that may be eligible to designate less than 65 percent of their budget for scholar support include the following:

(1) A project that is proposing to start a new program may request up to a year for program development and capacity building. In the initial project year, no scholar support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.

(2) A project that is proposing to build capacity may hire a field supervisor so that additional scholars can be prepared.

(3) A project that is proposing to expand or add a new area of emphasis to the program may hire additional faculty or obtain other resources such as expert consultants, additional teaching supplies, or equipment that would enhance the program.

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to special education or related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

Focus Area E: Preparing Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities. OSEP intends to fund 9 awards in this focus area. Programs that offer a sequence of career, vocational, or secondary transition courses or that enable personnel to meet State requirements for a credential or endorsement in secondary transition services for children with disabilities are eligible under Focus Area E. Eligible applicants must establish partnerships with the appropriate personnel in the institution's vocational rehabilitation counseling and career and technical education programs, if those programs are offered at the institution. Funds may be used to support faculty from those programs for their involvement in the activities outlined in this priority. Applicants must also provide documentation of the partnership in the form of a letter from the Dean or Department Chair. This letter must describe how the faculty from those programs will be involved in the partnership (*e.g.,* involvement in the design and delivery of courses and the supervision of scholar practicum experiences).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following priorities. For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

Applicants that demonstrate an established relationship with one or more high-need LEAs (as defined in this absolute priority) or publically funded preschool programs, including Head Start programs or early intervention programs serving children who are eligible for services under Part C of the IDEA, located within the geographic boundaries of a high-need LEA that will provide scholars with a high-quality practicum experience in a high-poverty school (as defined in this absolute priority), which may include a professional development school, or a publically funded preschool program or early intervention program and provide opportunities for research-based professional development on strategies to better serve high-need children with disabilities.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

In Focus Area D, applicants that document that they are institutions with minority enrollment of 50 percent or more.

Competitive Preference Priority 3: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

In Focus Areas A, B, C, and D, applicants that prepare personnel who work with children, including infants and toddlers, who are deaf or hard of

hearing to teach them listening and spoken language skills.

Note: Five is the maximum amount of competitive preference points an applicant can receive. Applicants must include in the one-page abstract submitted with the application, a statement indicating which competitive preference priorities they have addressed.

References:

Bruder, M.B. (December, 2004a). *The National Landscape of Early Intervention in Personnel Preparation Standards under Part C of the Individuals with Disabilities Education Act (IDEA).* A.J. Pappanikou Center for Excellence in Developmental Disabilities, Farmington, CT. Available at: *http://www.uconnucedd.org/projects/per_prep/per_prep_resources.html.*

Bruder, M.B. (December, 2004b). *The National Landscape of Early Intervention and Early Childhood Special Education: 619 Data Report.* A.J. Pappanikou Center for Excellence in Developmental Disabilities, Farmington, CT. Available at: *http://www.uconnucedd.org/projects/per_prep/per_prep_resources.html.*

McLeskey, J. Billingsley, B. (2008). How does the quality and stability of the teaching force influence the research-to-practice gap? *Remedial and Special Education,* 29 (5), 293–305.

McLeskey, J., Tyler, N., & Flippin, S.S. (2004). The supply and demand for special education teachers: A review of research regarding the chronic shortage of special education teachers. *Journal of Special Education,* 38 (1), 5–21.

Absolute Priority 3—Special Education Preservice Program Improvement Grants (84.325T).

Background: State educational agencies (SEAs), institutions of higher education (IHEs), and local educational agencies (LEAs) consistently report that personnel preparation programs for kindergarten through grade 12 (K–12) special education teachers should be restructured or redesigned so that graduates of these programs meet the highly qualified teacher (HQT) requirements in the Individuals with Disabilities Education Act (IDEA). To accomplish this goal, personnel preparation programs must ensure that their graduates who expect to be providing instruction in a core academic subject are able to meet State special education certification or licensure requirements, as well as have the necessary content knowledge, consistent with the HQT requirements in IDEA.

In A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act (ESEA) (Blueprint),[19] the Department notes that "[r]esearch shows that top-performing teachers can make a dramatic difference in the achievement of their students, and suggests that the impact of being assigned to top-performing teachers year after year is enough to significantly narrow achievement gaps." Reflecting this research, in both the Department's Notice of Final Supplemental Priorities [20] and the Blueprint, the Department has called for evaluating teacher effectiveness using multiple measures, including, in significant part, the academic growth of a teacher's students. High-quality information on teacher effectiveness that is based on multiple measures can be used to provide feedback to teachers for on-going improvement and support teachers' access to effective preparation, on-going support, recognition, and the collaboration opportunities teachers need to succeed.

Priority: The purpose of this priority is to support the improvement and restructuring (through expansion or redesign) of K–12 special education teacher preparation programs to ensure that program graduates meet the HQT requirements in IDEA and effectively serve children with high-incidence disabilities. For the purposes of this priority, the term *high-incidence disabilities* refers to learning disabilities, emotional disturbance, or intellectual disabilities. In order to be eligible under this priority, applicants must currently prepare special education personnel (at the baccalaureate or master's level) to serve school-age children with high-incidence disabilities.

Note 1: This priority only supports the improvement or restructuring of existing programs for high-incidence personnel (for example, the expansion of a program for elementary school teachers to include a program for secondary school teachers serving children with high-incidence disabilities). This priority does not support the development of new programs for high-incidence personnel. In addition, this priority does not support the improvement of programs in IHEs that are preparing preschool teachers.

Note 2: No more than one cooperative agreement will be awarded under this priority per IHE during the five-year project period.

To be considered for funding under the Special Education Preservice Program Improvement Grants priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. These requirements are as follows:

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services," how—

(1) The first year of the project period will be used for planning an improved or restructured K–12 teacher preparation program that includes induction and mentoring for program participants in LEAs. The planning activities during the first year must include revising the curriculum, integrating evidence-based interventions that improve outcomes for children with high-incidence disabilities into the improved or restructured program (including providing research citations for those evidence-based interventions), and utilizing existing high-quality training resources on evidence-based interventions, such as those developed by OSEP-funded Centers (*e.g.,* IDEA '04 and Research For Inclusive Settings Center for Training Enhancements (see *http://www.iris.peabody.vanderbilt.edu*); National Center on Response to Intervention (see *http://www.rti4success.org*)). Applicants must describe first-year activities, document the specific evidence-based interventions to be included in the improved or restructured program, and include a five-year timeline and implementation plan in their applications. This plan must describe the proposed project activities associated with implementation of the improved or restructured program. Implementation of the plan may not begin without approval from OSEP;

(2) The improved or restructured program is designed to integrate coursework with practicum opportunities that will enhance the competencies of beginning special education teachers to—

(i) Collaborate and work with regular education teachers and other personnel to:

(A) Provide effective services and instruction in academic subjects to children with high-incidence disabilities in K–12 regular education classrooms.

(B) Address the challenges of serving high-need children with disabilities;

Note: For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5)

[19] The following Web site provides more information on A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act (ESEA): *http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf.*

[20] The following link provides more information on the Supplemental Priorities for Discretionary Grants, published in the **Federal Register** on December 15, 2010 (75 FR 78486): *http://edocket.access.gpo.gov/2010/pdf/2010–31189.pdf.*

are in foster care, (6) have been incarcerated, (7) are English learners, (8) are pregnant or parenting teenagers, (9) are new immigrants, (10) are migrant, or (11) are not on track to being college- or career-ready by graduation.

(ii) Incorporate universal design for learning principles [21] into curricula and instructional practice;

(iii) Integrate instructional and assistive technologies into the delivery of services;

(iv) Collect, analyze, and use data, including data on student achievement [22] and student growth,[23] to improve instructional practices and interventions; and

(v) Support and work with parents and families of children with disabilities;

(3) The improved or restructured program is designed to prepare special education teachers to address the specialized needs of high-need children with disabilities (as defined in this absolute priority) with high-incidence disabilities by identifying the competencies that special education teachers need to work effectively with this population;

(4) The improved or restructured program is designed to provide extended clinical learning opportunities,[24] field experiences, or supervised practica and ongoing high-quality mentoring and induction opportunities in local schools. Applicants also must demonstrate how they will utilize high-quality resources when designing the program to provide extended clinical learning opportunities, field experiences, or supervised practica (resources on these topics are available from the National Center to Inform Policy and Practice in Special Education Professional Development at *http://www.ncipp.org*);

(5) The improved or restructured program is designed to include field-based training opportunities in diverse settings including high-need LEAs,[25] high-poverty schools,[26] and low-performing schools, including the persistently lowest-achieving schools;[27]

(6) The improved or restructured program will—

(i) Enable scholars [28] to be highly qualified, in accordance with section 602(10) of IDEA and 34 CFR 300.18, in the State(s) to be served by the applicant; and

(ii) Ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards;

(7) The improved or restructured program is designed to provide support systems (including tutors, mentors, and other innovative practices) to enhance retention in and successful completion of the program; and

(8) The improved or restructured program will be maintained once Federal funding ends.

(b) For programs that will be restructured to produce graduates who meet the HQT requirements for teachers who teach core academic subjects, applicants must establish partnerships with the appropriate academic departments. Funds may be used to support faculty from the academic departments for their involvement in the activities outlined in paragraph (a)(4) of this priority. To address this requirement, applications must—

(1) Describe how representatives of relevant academic departments with expertise in the core academic subjects being addressed in the application will be involved in the partnership;

(2) Provide evidence that such partnerships will include a permanent faculty member from the appropriate academic departments, who will be involved in developing the overall project and designing the curriculum used to prepare scholars in the particular core academic subject; and

(3) Provide evidence that permanent faculty members from the appropriate academic departments participated in the design of the program.

(c) Develop and implement a plan to ensure that program faculty have the necessary supports, knowledge, and skills to implement the new

[21] For purposes of this priority, the term *universal design for learning* under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient" (20 U.S.C. 1003(24)). For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[22] For the purpose of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010-4/121510b.html*).

[23] For the purposes of this priority *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010-4/121510b.html*).

[24] For the purposes of this priority, *clinical learning opportunities* are a method of instruction for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

[25] For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[26] For purposes of this priority, the term *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 (*http://www2.ed.gov/legislation/FedRegister/other/2010-4/121510b.html*).

[27] For purposes of this priority, the term *persistently lowest-achieving schools* is defined according to the final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which were published in the **Federal Register** on October 28, 2010 (75 FR 66363). According to Section I.A.3 of these requirements, the term "persistently lowest-achieving schools" means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) 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

(ii) 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

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) 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

(ii) 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.

(b) To identify the 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 number of years in the "all students" group.

[28] For the purposes of this priority, the term *scholar* means an individual who is pursuing a baccalaureate or master's level degree related to special education.

interventions and curriculum in the improved or restructured program.

(d) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear plan for evaluating project outcomes. This plan must include a description of how the project will—

(1) Measure the extent to which evidence-based interventions are integrated within the program;

(2) Collect and analyze data on faculty members' implementation of the improved or restructured program;

(3) Collect and analyze data on scholars' competencies;

(4) Collect and analyze data on the quality of services provided by program graduates, including data on their students' outcomes (*e.g.,* academic, social, emotional, behavioral) and student growth; and

(5) Use the results and findings from this evaluation as a basis for informing and validating any proposed changes to the improved or restructured program. Applicants also must clearly describe how the project will report these evaluation results to OSEP in the grantee's annual and final performance reports.

Note: Under this evaluation requirement, grantees are encouraged—but not required—to engage in data collection activities after the completion of the grant.

(e) Include, in the application appendix, all course syllabi, in their entirety, for the existing teacher preparation program and a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *http://www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://www.tadnet.org/model_and_performance.*

(f) Submit to the Department, at the end of the first year of the project period, revised syllabi for the improved teacher preparation program.

(g) Meet the statutory requirements in section 662(e) through 662(f) of IDEA.

(h) Budget for planning and improvement activities, including any activities to be performed by consultants. This priority does not provide financial support for scholars during any year of the project.

(i) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(j) If the project maintains a Web site, include relevant information and documents in a form that meets government or industry-recognized standards for accessibility.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priority. For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Collaborative Activities with an SEA or State Licensing Agency.

Applicants that document how the proposed project will collaborate with the SEA or State teacher licensing agency on issues of program improvement that affect teacher quality and effectiveness. For purposes of this competitive preference priority, documentation must include at least a letter from both the Dean and Department Chair of the appropriate college or department that supports high-incidence special education teacher preparation and from the relevant SEA or State teacher licensing agency verifying their intent to collaborate to improve teacher quality and effectiveness. The letter must include examples of the methods to be used for collaboration (e.g., establishing a statewide consortium of teacher preparation programs for program improvement, program evaluation support, increasing the productivity of preparation programs, or other activities that would directly support program improvement of the project(s) within that State).

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Competitive Preference Points Based on Dual Certification (i.e., high-incidence disabilities and regular education).

Applicants with documentation that the improved or restructured program will prepare graduates to be dually certified in high-incidence disabilities and regular education. Documentation for purposes of this competitive preference priority must include a letter from both the Dean or Department Chair of the appropriate college or department that supports high-incidence special education teacher preparation and from the Dean or Department Chair of the appropriate college or department that prepares regular education teachers verifying their intent to collaborate to ensure that the improved or restructured program will prepare graduates to be dually certified in high-incidence disabilities and regular education. The letter must include a description of how the collaboration between colleges or departments will result in program graduates who are dually certified in both high-incidence disabilities and regular education *(e.g.,* collaborate to provide clinical learning opportunities, field experiences, or supervised practica that focus on children both with and without high-incidence disabilities; collaborate to ensure the SEA or State teacher licensing agency will certify program graduates in both high-incidence disabilities and regular education).

Note: Five is the maximum amount of competitive preference points an applicant can receive. Applicants must include in the project abstract a statement indicating which competitive preference priorities they have addressed.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Awards: Discretionary grants for competitions CFDA 84.325D and 84.325K, and cooperative agreements for competition CFDA 84.325T.

Estimated Available Funds: The Administration has requested $90,653,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2011, of which we intend to use an estimated $19,500,000 for the competitions announced in this notice. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY

2012 from the list of unfunded applicants from the competition.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

[Application notice for fiscal year 2011]

CFDA number and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award (budget period of 12 months)	Estimated number of awards	Project period	Contact person
84.325D Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel.	April 13, 2011	May 31, 2011	August 11, 2011.	$225,000–250,000	$237,500	$250,000	18	Up to 60 mos.	Patricia Gonzalez (202) 245–7355 Rm 4082.
84.325K Personnel Preparation in Special Education, Early Intervention, and Related Services.	April 13, 2011	May 31, 2011	August 11, 2011.	.....	.....	.....	.....	.....	Maryann McDermott (202) 245–7439 Rm 4062.
Focus Area A: Preparing Personnel to Serve Infants, Toddlers, and Preschool Age Children with Disabilities.	.....	.....	.....	225,000–250,000	237,500	*250,000	9	Up to 60 mos.	
Focus Area B: Preparing Personnel to Serve School-Age Children with Low-Incidence Disabilities.	.....	.....	.....	225,000–250,000	237,500	*250,000	11	Up to 60 mos.	
Focus Area C: Preparing Personnel to Provide Related Services, Speech and Language Services, and Adapted Physical Education Children, Including Infants and Toddlers, with Disabilities.	.....	.....	.....	225,000–250,000	237,500	*250,000	9	Up to 60 mos.	
Focus Area D: Preparing Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities.	.....	.....	.....	225,000–250,000	237,500	*250,000	10	Up to 60 mos.	
Focus Area E: Preparing Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities.	April 13, 2011	May 31, 2011	August 11, 2011.	225,000–250,000	237,500	*250,000	9	Up to 60 mos.	
84.325T Special Education Preservice Program Improvement Grants.	.....	.....	.....	275,000–300,000	288,500	*300,000	10	Up to 60 mos.	Tina Diamond (202) 245–6674 Rm 4094.

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

**For the *Special Education Preservice Program Improvement Grants,* 84.325T competition.

Note 1: We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.

Note 2: No more than one cooperative agreement will be awarded under this priority per IHE during the five-year project period. Programs in minority institutions that are preparing special education teachers of children with high-incidence disabilities are eligible to apply under this priority. For purposes of this competition, the term "minority institutions" include IHEs with a minority enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs).

Note: For *Absolute Priority 3—Special Education Preservice Program Improvement Grants* (84.325T), programs in IHEs that propose to prepare preschool teachers are not eligible to apply under that competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S.

Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.325D, 84.325K, or 84.325T.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages using the following standards:

• A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for the competitions announced in this notice.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under the competitions announced in this notice may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Personnel Development to Improve Services and Results for Children with Disabilities competitions, CFDA numbers 84.325D, 84.325K, and 84.325T, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Personnel Development to Improve Services and Results for Children with Disabilities program competitions—CFDA numbers 84.325D, 84.325K, and 84.325T at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.325, not 84.325D).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA number 84.325D, 84.325K, or 84.325T), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA number 84.325D, 84.325K, or 84.325T) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* (a) We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

(b) In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities Program. These measures include: (1) The percentage of projects that incorporate scientifically based practices into the curriculum; (2) the percentage of scholars who exit preparation programs prior to completion due to poor academic performance; (3) the percentage of scholars completing the IDEA-funded preparation programs who are knowledgeable and skilled in scientifically based practices for children, including infants and toddlers, with disabilities; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were prepared upon program completion; (5) the percentage of degree or certification recipients who are working in the area(s) for which they were prepared upon program completion and are fully qualified under IDEA; (6) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were prepared and who are fully qualified under IDEA; and (7) the Federal cost per fully qualified degree/certification recipient.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

See chart in the *Award Information* section in this notice for the name, room number and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2600.

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

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department 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.* 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: April 7, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–8745 Filed 4–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–378]

Application To Export Electric Energy; Cargill Power Markets, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Cargill Power Markets, LLC (CPM) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 13, 2011.

ADDRESSES: Comments, protests, or requests to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On March 22, 2011, DOE received an application from CPM for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. CPM does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that CPM proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by CPM have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the CPM application to export electric energy to Mexico should be clearly marked with Docket No. EA–378. An additional copy is be filed directly with Valerie L. Ege, Compliance Manager, Cargill Power Markets, LLC, 9350 Excelsior Blvd., MS 150, Hopkins, MN 55343. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on April 7, 2011.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–8839 Filed 4–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of cancellation of open meeting.

SUMMARY: On March 28, 2011, in FR Doc. 2011–7243, on page 17118, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on April 13–14, 2011 of the Environmental Management Site-Specific Advisory Board Chairs (76 FR 17118). This notice announces the cancellation of this meeting.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander Brennan, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–7711.

Issued at Washington, DC, on April 8, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–8970 Filed 4–8–11; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1975–109, 2777–115, 2061–088]

Idaho Power Company; Notice of Application of Land Management Plan Update for the Bliss, Upper Salmon Falls, and Lower Salmon Falls Projects and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land Management Plan Update.

b. *Project Nos.:* 1975–109, 2777–115, and 2061–088.

c. *Date Filed:* December 22, 2010.

d. *Applicant:* Idaho Power Company.

e. *Name of Projects:* Bliss, Upper Salmon Falls, and Lower Salmon Falls Hydroelectric Projects.

f. *Location:* The projects are located in south-central Idaho on the Snake River from river mile 551 near Bliss to river mile 592 near Hagerman in Twin Falls, Gooding, and Elmore counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* L. Lewis Wardle, Licensing Program Coordinator, Idaho Power, P.O. Box 70, 1221 W Idaho Street, Boise, ID 83702, (208) 388–2964, *lwardle@idahopower.com.*

i. *FERC Contact:* Dr. Mark Ivy, (202) 502–6156, *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 6, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

Please include the project numbers (P–1975–109, P–2777–115, and P–2061–088) on any comments, motions, or recommendations filed.

k. *Description of the Application:* Idaho Power Company, licensee of the Bliss, Upper Salmon Falls, and Lower Salmon Falls Hydroelectric Projects, has filed a combined Land Management Plan (LMP) update for the projects. The LMP is a comprehensive plan to manage project lands including control of noxious weeds, protection and enhancement of riparian habitats, and protection and enhancement of shoreline habitats in a manner that is consistent with license requirements and project purposes, and to address the needs and interests of stakeholders. While information regarding the Upper and Lower Malad Hydroelectric Project is also included in the LMP for informational purposes, the LMP is not being updated for this project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8770 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12965–002]

Symbiotics, LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments; Take Notice That the Following Hydroelectric Application Has Been Filed With the Commission and Is Available for Public Inspection

a. *Type of Application:* Original Major License.

b. *Project No.:* 12965–002.

c. *Date Filed:* March 25, 2011.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Wickiup Dam Hydroelectric Project.

f. *Location:* The proposed project would be constructed at the existing U.S. Bureau of Reclamation (Reclamation) Wickiup dam located on

the Deschutes River near the city of LaPine in Deschutes County, Oregon. The project would occupy 1.02 acres of Federal lands jointly managed by the U.S. Forest Service and Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Chief Operating Officer, Symbiotics, LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; telephone (541) 330–8779.

i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or *matt.cutlip@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The proposed project would consist of the following new facilities: (1) Two 8-foot-diameter by 75-foot-long steel penstocks would be connected to the existing twin outlet conduits above the existing regulating tube valves and combine into a 10-foot-diameter by 68-foot-long penstock that would deliver flow to a powerhouse; (2) two 8-foot-diameter isolation valves would be constructed within the 75-foot-long penstocks; (3) a 50-foot by 50-foot concrete powerhouse would be located on the northwest side of the existing concrete stilling basin and would house one generating unit with a total installed capacity of 7.15 megawatts; (4) a fish killing rotor system would be constructed downstream of the powerhouse draft tube to prevent non-native fish species from surviving Kaplan turbine passage into the Deschutes River downstream of the project; (5) a tailrace picket barrier would be constructed downstream of the fish killing rotor system to protect upstream migrating fish; (6) a 135-foot-long, 24.9-kilovolt transmission line would be buried and would connect the project to an existing power line; and (6) appurtenant facilities.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	June 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 2011.
Commission issues Draft EA	February 2012.
Comments on Draft EA	March 2012.
Modified Terms and Conditions	May 2012.
Commission Issues Final EA	August 2012.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 7, 2011

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8891 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–145–000]

Florida Gas Transmission Company, LLC; Notice of Application

Take notice that on March 24, 2011, Florida Gas Transmission Company, LLC (FGT), 5444 Westheimer Road, Houston, Texas 77056, filed in Docket No. CP11–145–000, an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's Regulations, to construct and operate a new electric compressor station with appurtenant facilities; to upgrade existing pipeline facilities; and to install auxiliary facilities at an existing compressor station, all located in Orange County, Florida (known as The Cape Canaveral Project). Specifically, FGT proposes to construct and operate a new Compressor Station No. 32 consisting of two (2) 15,000 horsepower electric units connecting to FGT's existing 26-inch mainline; to upgrade 800 feet of existing 26-inch mainline to allow for higher design pressure at the tie-ins of the suction and discharge piping; and to install auxiliary facilities at FGT's existing Compressor Station No. 18. FGT also states that it has entered into an agreement with Florida Power & Light Company (FPL) in which FPL agrees to reimburse FGT for the costs of the proposed facilities, including the ongoing operation and maintenance costs and electric power cost. In conjunction, FGT plans to abandon and remove the existing Cape Canaveral Measurement and Regulator Station (M&R Station) and will contruct a new M&R station and associated facilities pursuant to its Blanket Certificate in Docket No. CP82–553–000. The total estimated cost for the proposed Cape Canaveral Project is $81.44 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, or call (713) 989–2024, or fax (713) 989–1158, or by e-mail *Stephen.Veatch@sug.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 26, 2011.

Dated: April 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8765 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–390]

Grand River Dam Authority; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters: Water Withdrawal.

b. *Project No.:* 1494–390.

c. *Date Filed:* November 29, 2010.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The requested easement will be located on Grand River Dam Authority property in Section 2, Township 23 North, Range 21 East, Mayes County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Tamara E. Jahnke, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, Oklahoma 74301, (918) 256–5545.

i. *FERC Contact:* Peter Yarrington, (202) 502–6129, *Peter.Yarrington@ferc.gov* or Kurt Powers, (202) 502–8949, *Kurt.Powers@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–1494–390) on any comments, motions, or protests filed.

k. *Description of Request:* On November 29, 2010, the Grand River Dam Authority (GRDA; licensee) filed an application for non-project use of project lands and waters. On behalf of Ketchum Public Works Authority (Ketchum), GRDA requests authorization from the Commission to grant Ketchum a new easement for the installation of two new raw water intake structures. The raw water would be sent via a new raw water line to Ketchum's new water treatment plant. The new intake structures would be located next to the existing intake structures. Based on calculated withdrawal rates provided by GRDA, the maximum possible withdrawal rate would approach 5.67 million gallons per day. The requested easement would be located on GRDA property in Section 2, Township 23 North, Range 21 East, Mayes County, Oklahoma.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be

viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the water withdrawal application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8890 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–74–001]

Kinder Morgan Texas Pipeline LLC; Notice of Baseline Filings

Take notice that on April 6, 2011, Kinder Morgan Texas Pipeline LLC submitted a revised baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, April 18, 2011.

Dated: April 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8887 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–32–000]

American Electric Power Service Corporation v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on April 4, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2010) and section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), American Electric Power Service Corporation (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent), alleging that Schedule 8.1, section D.8 to the PJM Interconnection, L.L.C. Reliability Assurance Agreement is unjust, unreasonable, and unduly discriminatory.

Complainant certifies that copies of the complaint were served on representatives of the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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

Dated: April 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8766 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–27–000]

Duke Energy Indiana, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Gallagher Station Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Gallagher Station Pipeline Project proposed by Duke Energy Indiana, Inc. (DEI) in the above-referenced docket. DEI requests authorization to construct, operate, and maintain a new natural gas pipeline in Floyd and Harrison Counties, Indiana and Jefferson County, Kentucky.

The EA assesses the potential environmental effects of the construction and operation of the Gallagher Station Pipeline Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers participated as a cooperating agency in the preparation of this EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Gallagher Station Pipeline Project would involve construction of 19.42 miles of new 20-inch-diameter pipeline, one metering and regulating station located at the Gallagher Electric Generating Station in Floyd County, Indiana, one metering station at the interconnection with the Texas Gas Pipeline located in Jefferson County, Kentucky, and two mainline block valves to be located along the pipeline.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before May 6, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–27–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–27). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: April 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8769 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2149–152]

Wells Hydroelectric Project; Notice of Availability of the Draft Environmental Impact Statement for the Wells Hydrolectric Project and Intention To Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the Wells Hydroelectric Project (FERC No. 2149), located on the Columbia River in Douglas, Okanogan, and Chelan counties, Washington, and has prepared a draft environmental impact statement (EIS) for the project. The project occupies 8.60 acres of U.S. Bureau of Land Management land and 6.55 acres of U.S. Army Corps of Engineers land.

The draft EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Wells Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by Tuesday, May 31, 2011, and should reference Project No. 2149–152. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the draft EIS. The time and location of the meeting is as follows:

Evening Meeting

Date: May 12, 2011.
Time: 6:30 p.m.–8:30 p.m.
Place: Douglas PUD Auditorium,
Address: 1151 Valley Mall Parkway, East Wenatchee, WA.

Morning Meeting

Date: May 13, 2011.
Time: 10 a.m.–12 p.m.
Place: Douglas PUD Auditorium,
Address: 1151 Valley Mall Parkway, East Wenatchee, WA.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, please contact Kim A. Nguyen at (202) 502–6105 or at *kim.nguyen@ferc.gov*.

Dated: April 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8767 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–102–001]

Hattiesburg Industrial Gas Sales, L.L.C.; Notice of Filing

Take notice that on April 1, 2011, Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg) filed a revised Statement of Operating Conditions to comply with a Commission order issued on March 28, 2011, (134 FERC ¶ 61,236) as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 12, 2011.

Dated: April 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8768 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–100–000]

Consumers Energy Company; Notice of Filing

Take notice that on March 30, 2011, Consumers Energy Company filed to provide notice of its cancellation of its Terms and Conditions for Interstate Gas Transportation proposed to be effective March 31, 2011, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Tuesday April 12, 2011.

Dated: April 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8764 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13850–000]

Qualified Hydro 25, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 30, 2010, Qualified Hydro 25, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Easton Diversion Dam Hydroelectric Project (Easton Dam project) to be located on the Yakima River near Easton in Kittitas County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The Commission issued a notice on February 16, 2011, accepting the application and soliciting comments, motions to intervene, and competing applications within a 60-day period. On March 31, 2011, the Kittitas Reclamation District filed a letter with the Commission stating they were not notified of the preliminary permit application. This notice is extending the period for soliciting comments, motions to intervene, and competing applications for an additional 30 days.

The proposed project would utilize the existing 66-foot-high, 248-foot-long concrete gravity dam and gated outlet on the Yakima River, owned and operated by the U.S. Bureau of Reclamation, and will consist of the following: (1) A new 20-foot-wide concrete intake structure with trash racks and intake gates; (2) a new 325-foot-long, 72-inch-diameter steel penstock from the intake structure to the powerhouse; (3) a new 50-foot by 40-foot reinforced concrete powerhouse containing one Kaplan turbine with a capacity of 1.2 megawatts; (4) a new substation; (5) a new approximately 1,400-foot-long, 34.5–69 kilovolt transmission line which will tie into an undetermined interconnection; and (6) appurtenant facilities. The estimated annual generation of the Easton Dam project would be 5.0 gigawatt-hours.

Applicant Contact: Ramya Swaminthan, Qualified Hydro 25, LLC, 33 Commercial St., Gloucester, MA 01930; phone: (978) 283–2822.

FERC Contact: Ryan Hansen (202) 502–8074 or by e-mail at *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 30 Days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13850–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8888 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–168–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on April 1, 2011, Eastern Shore Natural Gas Company (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware, 19904, pursuant to its blanket certificate issued in Docket No. CP96–128–000,[1] filed an application in accordance to sections 157.205(b), 157.208(c), and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for the construction, ownership, and operation of new mainline facilities in New Castle County, Delaware, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In order to provide additional firm natural gas transportation service to Delaware City Refining Company LLC (DCRC), Eastern Shore proposes to construct, own, operate, and maintain about 0.7 miles of new sixteen-inch steel pipeline looping along the existing corridor of Porter Road, and about 0.26 miles of new ten-inch steel pipeline looping along the existing corridor of School House Road in New Castle County, Delaware. Eastern Shore has entered into a binding Precedent Agreement with DCRC in which DCRC has agreed to execute a nine-and-a half-year FT Service Agreement with Eastern Shore to provide additional natural gas transportation service of 3,405 dts/day under Eastern Shore's maximum FT Zone One Tariff Rate on file with the Commission. The total estimate cost of the proposed facilities is $1,733,975. Eastern Shore proposes the facilities to be completed and placed into service by November 1, 2011.

Any questions concerning this application may be directed to Glen DiEleuterio, Project Manager, at (302) 734–6710, ext. 6723 or via fax (302) 734–6745, or e-mail at *GDIEleuterio@esng.com*.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: April 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–8889 Filed 4–12–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 81 FERC ¶ 61,013 (1997).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0911; FRL–8869–2]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Section 406(b)" and identified by EPA ICR No. 1669.06 and OMB Control No. 2070–0158, is scheduled to expire on August 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0911, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0911. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0911. EPA's policy is that all comments received will be included in the 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is

not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Michelle Price, National Program Chemicals Division (7407T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0744; fax number: (202) 566–0741; e-mail address: *price.michelle@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it 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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are persons who perform renovations for compensation on housing constructed prior to 1978.

Title: Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Section 406(b).

ICR numbers: EPA ICR No. 1669.06, OMB Control No. 2070–0158.

ICR status: This ICR is currently scheduled to expire on August 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection involves third-party notification to owners and occupants of housing that will inform such individuals about the dangers of lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby aiding them in avoiding potentially hazardous exposures and protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) of the Toxic Substances Control Act (TSCA) requires EPA to promulgate regulations requiring certain persons who perform renovations for compensation on target housing to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Further, the firm performing the renovation must keep records acknowledging receipt of the pamphlet on file for three years after completion of work. Those who fail to provide the pamphlet or keep records as required may be subject to both civil and criminal sanctions.

Responses to the collection of information are mandatory (see 40 CFR part 745, subpart E). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and

review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 320,504.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 35.4.

Estimated total annual burden hours: 2,577,280 hours.

Estimated total annual costs: $140,498,539. This includes an estimated burden cost of $140,498,539 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 545,206 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's change in methodology for calculating the number of target housing renovation events to that used in the 2008 Renovation, Repair, and Painting rule analysis. The supporting statement provides additional information. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 6, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–8883 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2010–0989; FRL–9294–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Contractor Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before May 13, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2010–0989 to, (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel Humphries, Office of Acquisition Management, 3802R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4377; e-mail address: *humphries.daniel@epa.gov.*

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 25, 2011, 76 FR 4343, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2010–0989, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Contractor Conflicts of Interest.

ICR numbers: EPA ICR No. 1550.09, OMB Control No. 2030–0023.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA contractors will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement

actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work order is issued.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,138 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 135.

Estimated Number of Respondents: 135.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 153,626.

Estimated Total Annual Cost: $9,858,202.20 includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 7, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8866 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2010–0858; FRL–9294–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0858, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *spenillo.justin@epa.gov*, or by mail to: Justin A Spenillo, Environmental Protection Agency Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101; and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Justin A Spenillo, Office of Air, Waste and Toxics (AWT–107), Environmental Protection Agency Region 10, 1200 Sixth Avenue, Seattle, WA 98101; telephone number: (206) 553–6125; fax number: (206) 553–0110; e-mail address: *spenillo.justin@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 29, 2010 (75 FR 66754), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–R10–OAR–2010–0858, which is available for online viewing at *http://www.regulations.gov*, or in person viewing during normal business hours at Environmental Protection Agency Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, WA.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington (Renewal).

ICR number: EPA ICR No. 2020.05, OMB Control No. 2060–0558.

ICR status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA promulgated Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations located in Idaho, Oregon, and Washington in 40 CFR part 49 (70 FR 18074, April 8, 2005). The FIPs in the final rule, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA uses this information to manage the activities and sources of air pollution on the Indian reservations in Idaho, Oregon, and Washington. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, track emissions trends and changes,

identify potential air quality problems, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory. Regulated entities can assert claims of business confidentiality and EPA will address these claims in accordance with the provisions of 40 CFR part 2, subpart B.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action include owners and operators of emission sources in all industry groups and tribal, Federal, and local governments, located on the identified Indian reservations.

Estimated Number of Respondents: 1,694.

Frequency of Response: Annually and on occasion.

Estimated Total Annual Hour Burden: 6,245.

Estimated Total Annual Cost: $396,245. This includes an estimated labor cost of $396,245. Capital investment and operation and maintenance costs are assumed to be zero.

Changes in the estimates: There is an increase of 1,956 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is the result of a number of changes. It reflects adjustments to the burden estimates for this collection using consultation input, historical data, and experience with implementing the FARR. Some components of the burden estimates increased and some components decreased. In most cases, the burden estimates increased based on input from the source consultations. For some provisions the estimates of the number of respondents increased. Some estimates changed based on additional information EPA has gained through implementing the rules.

Dated: April 6, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8868 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0093; FRL–9294–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Clean Air Act Tribal Authority (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 13, 2011.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2004–0093, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket Information Center, Mail Code: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Darrel Harmon, Office of Air and Radiation, Immediate Office, (6101A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–7416; fax number: 202–564–0394; e-mail address: *harmon.darrel@epa.gov* or Danielle Dixon, Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Outreach and Information Division, (C304–01), Research Triangle Park, North Carolina 27711; telephone number: 919–541–2808; fax number 919–541–0072; e-mail address: *dixon.danielle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 29, 2010 (75 FR 73076), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0093, which is available for public viewing on-line at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Clean Air Act Tribal Authority (Renewal).

ICR numbers: EPA ICR No. 1676.06, OMB Control No. 2060–0306.

ICR Status: This ICR is scheduled to expire on 05/31/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) seeks authorization for Tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act (CAA) and to submit applications to implement a CAA program. This ICR extends the current collection of information period for determining eligibility, which expires May 31, 2011. The ICR also is revising the estimates of burden costs for Tribes in completing a CAA application.

The program regulation provides for Indian Tribes, if they so choose, to assume responsibility for the development and implementation of CAA programs. The regulation, Indian Tribes: Air Quality Planning and Management (Tribal Authority Rule [TAR] 40 CFR parts 9, 35, 49, 50 and 81), sets forth how Tribes may seek authority to implement their own air quality planning and management programs. The rule establishes: (1) Which CAA provisions Indian Tribes may seek authority to implement, (2) what requirements the Tribes must meet when seeking such authorization, and (3) what Federal financial assistance may be available to help Tribes establish and manage their air quality programs. The TAR provides Tribes the authority to administer air quality programs over all air resources, including non-Indian owned fee lands, within the exterior boundaries of a reservation and other areas over which the Tribe can demonstrate jurisdiction. An Indian Tribe that takes responsibility for a CAA program would essentially be treated in the same way as a state would be treated for that program.

Responses to the collection of information are required to obtain a benefit (40 CFR parts 9, 35, 49, 50 and 81). Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979). There is no sensitive information required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, locals, Indian Tribes.

Estimated Number of Respondents: 8.

Frequency of Response: One-time application.

Estimated Total Annual Hour Burden: 320.

Estimated Total Annual Cost: $18,896.00, which includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 40 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The total burden hours have been updated to reflect new estimates that are based on the number of applications the EPA received under the previous ICR and what EPA estimates it will receive in the upcoming years. There is no difference between the active ICR and this ICR in the number of hours per response.

Dated: April 7, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–8870 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9294–5]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's action identifying water quality limited segments and associated pollutants in Louisiana to be listed pursuant to Clean Water Act Section 303(d), and request for public comment. Section 303(d) requires that States submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On April 5, 2011, EPA partially approved and proposed to partially disapprove Louisiana's 2008 Section 303(d) submittal. Specifically, EPA approved Louisiana's listing of 409 waterbody pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were added by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments. EPA is providing the public the opportunity to review its proposed decisions to add the three waters to Louisiana's 2008 Section 303(d) List. EPA will consider public comments and if necessary amend its proposed action on the additional waterbodies identified for inclusion on Louisiana's Final 2008 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before May 13, 2011.

ADDRESSES: Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202-2733, telephone (214) 665–2145, facsimile (214) 665–6490, or e-mail: *smith.diane@epa.gov.* Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 3 water quality limited segments for which EPA proposed disapproval of Louisiana's decisions not to list can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm,* or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards. For those waters, States are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking. EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require States to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for States to submit Section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Louisiana submitted to EPA its listing decisions under Section 303(d) on August 25, 2009. On April 5, 2011, EPA approved Louisiana's listing of 409 water body-pollutant combinations and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were proposed for addition by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments. EPA solicits public comment on its identification of three additional waters for inclusion on Louisiana's 2008 Section 303(d) List.

Dated: April 6, 2011.

Miguel I. Flores,

Director, Water Quality Protection Division.

[FR Doc. 2011–8963 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9295–5]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first-served basis.

DATES: The NEJAC meeting will convene Tuesday, May 10, from 9 a.m. until 7 p.m., and reconvene Wednesday, May 11, 2011, from 9 a.m. to 7 p.m., and Thursday, May 12, 2011, from 9 a.m. to 2 p.m. All noted times are Eastern Time.

Two public comment sessions relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) are scheduled for Tuesday, May 10, 2011, from 3:30 p.m. to 7 p.m. and Wednesday, May 11, 2011, from 3:30 p.m. to 7 p.m. All noted times are Eastern Time. The Tuesday, May 10, 2011, public comment period will be for the NEJAC to receive feedback on where it should focus its advisory attention for the implementation plans associated with Plan EJ 2014. Recently EPA began a comprehensive effort to enhance its Agency-wide integration of environmental justice by developing Plan EJ 2014. The plan is intended to go beyond current EJ related efforts (such as the EJ Small Grants, Brownfields Redevelopment, the CARE Program, EJ Showcase Communities, and the Urban Waters Initiative, to name a few) and instead focus on new efforts. The Wednesday, May 11, 2011, public comment period will have a general comment theme. Members of the public who wish to participate during the public comment periods are highly encouraged to pre-register by 12 p.m. Eastern Time, Thursday, April 20, 2011.

ADDRESSES: The NEJAC meeting will be held at the New York Marriot at the Brooklyn Bridge, 333 Adams Street, Brooklyn, New York 11201. TELEPHONE: 718–246–7000, FAX: 718–246–0563 or TOLL FREE: 1–800–228–9290.

FOR FURTHER INFORMATION CONTACT: Questions concerning the meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (MC2201A), Washington, DC, 20460; by telephone at 202–564–1044, via e-mail at *Bell.Aaron@epa.gov;* or by FAX at 202–501–0936. Additional information about the meeting is available at the following Web site address: *http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html.*

Registration is encouraged for all participants. Pre-registration by noon Thursday, April 20, 2011 for all attendees is highly recommended. To register online, visit the Web site address above. Requests for pre-registration forms should be faxed to Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or e-mailed to *Meetings@AlwaysPursuingExcellence.com.* Please remember to specify which meeting you are registering to attend (*e.g.,* NEJAC May 2011). Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the April 20, 2011 deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may make appropriate arrangements in writing using the above fax number.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the EPA Administrator on areas that may include, among other things, "advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice."

The meeting shall be used to receive comments, and discuss and provide recommendations regarding these primary areas: (1) EPA's Plan EJ 2014 implementation plans, including Science Tools and Enforcement and Compliance; (2) dialogue with Regional Administrator; (3) coastal ecosystem restoration recommendations; and (4) local government priorities for environmental justice.

A. Public Comment: Individuals or groups making oral presentations during the public comment periods will be limited to a total time of five minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of a community, organization, or group will be allowed to speak. The suggested format for written public comments is as follows: Name of Speaker; Name of Organization/Community; City and State; E-mail address; and a brief description of the concern and what you want the NEJAC to advise EPA to do.

Written comments received by noon Thursday, April 20, 2011, will be included in the materials distributed to the members of the NEJAC. Written comments received after that date and time will be provided to the NEJAC as time allows. All information should be sent to the address, e-mail, or fax number listed in the **FOR FURTHER INFORMATION, CONTACT** section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or *Meetings@AlwaysPursuingExcellence.com.* To request special accommodations for a disability, please contact Ms. Rosas at least 7 working days prior to the meeting, to give EPA sufficient time to process your request. All other requests specifically related to the meeting should be sent to the address, E–MAIL, or FAX number listed in the **FOR FURTHER INFORMATION, CONTACT** section above.

Dated: April 7, 2011.

Victoria J. Robinson,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2011–8875 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0197; FRL–8867–3]

Streptomyces Strain K61, and Wood Oils and Gums; Registration Review Final Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decisions for the pesticides listed in the table in Unit II.A. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact* the person identified in the table in Unit II.A. *For general information on the registration review program for biopesticides, contact:* Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; fax number: (703) 308–7026; e-mail address: *pfeifer.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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 pesticide-specific contact person listed in the table in Unit II.A.

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

EPA has established dockets for these actions under the docket identification (ID) numbers listed in the table in Unit II.A. Publicly available docket materials are available either in the electronic dockets 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. Background

A. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's final registration review decisions for the pesticides shown in the following table. A brief description of each pesticide and its use(s) is provided after the table.

TABLE 1—REGISTRATION REVIEW FINAL DECISIONS

Registration review case name and number	Pesticide docket ID No.	Pesticide specific contact person, telephone number, e-mail address
Streptomyces Strain K61 Case No.: 6066	EPA–HQ–OPP–2009–0509	Anna Gross, (703) 305–5614, *gross.anna@epa.gov.*
Wood Oils and Gums Case No.: 3150	EPA–HQ–OPP–2009–0258	Sadaf Shaukat, (703) 347–8670, *shaukat.sadaf@epa.gov.*

1. *Streptomyces Strain K61 (6066). Streptomyces* Strain K61 is a naturally occurring soil bacterium registered for control of seed, root and stem rot, and to prevent wilt of ornamentals, vegetables and tree and forest seedlings caused by *Fusarium, Alternaria,* and *Phomopsis. Streptomyces* Strain K61 also suppresses root rots of *Pythium, Phytophthora* and *Rhizoctonia* in greenhouse plants and is used as a seed treatment for seed or soil borne damping off and early root rot.

2. *Wood Oils and Gums (3150).* The Wood Oils and Gums registration review case no longer contains any other wood oils or gums with active ingredients with registered products except for Cedar oil. As a biochemical active ingredient, products containing Cedar oil are registered as insect repellents.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered the pesticides listed in the above table in light of the FIFRA standard for registration. The Final Decision documents in the listed dockets describe the Agency's rationale for issuing registration review final decisions for these pesticides.

In addition to the final registration review decision documents, the registration review dockets for the pesticides listed in the above table also include other relevant documents related to the registration review of these cases. The proposed registration review decisions were posted to the docket and the public was invited to submit any comments or new information. During the 60–day comment period, no public comments were received concerning the pesticides listed in the above table.

Pursuant to 40 CFR 155.58(c), the registration review case dockets for the pesticides listed in the above table will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of these pesticides are provided at the following Web addresses:

1. *Streptomyces Strain K61 (6066): http://www.epa.gov/oppsrrd1/registration_review/streptomyces/index.html*

2. *Wood Oils and gums (3150): http://www.epa.gov/oppsrrd1/registration_review/wood-oils/index.html*

B. What is the agency's authority for taking this action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Pesticides and pests, Registration review, *Streptomyces* Strain K61, and Wood Oils and Gums.

Dated: March 30, 2011.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–8548 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0115; FRL–8866–9]

Notice of Withdrawal of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal of pesticide petitions (0G7716, 8F7489, 9E7635, and 9F7587) proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities. The petitioners withdrew their petitions voluntarily and without prejudice to future filing.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Although this action only applies to the petitioners listed in Unit II., it is directed to the public in general. Since various individuals or entities may be interested, EPA has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed at the end of the withdrawal summary for the pesticide petition of interest.

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–2011–0115. 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 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. What action is EPA taking?

EPA is announcing the withdrawal of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, and proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities.

In accordance with 40 CFR 180.7(f), a summary of each of the petitions covered by this notice, prepared by the petitioner, was included in a docket EPA created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

Withdrawal by Petitioner

1. PP 0G7716 (Aspergillus flavus NRRL 21882). EPA issued a notice in the **Federal Register** of September 30, 2010 (75 FR 60452) (FRL–8837–2) (EPA–HQ–OPP–2010–0547), which announced the filing of a pesticide petition (PP 0G7716) by Circle One Global, Inc., P.O. Box 18300, Greensboro, NC 27409. This petition proposed that EPA amend 40 CFR 180.1254 by establishing a temporary exemption from the requirement of a tolerance for residues of the fungicide, Aspergillus flavus NRRL 21882, in or on cotton. On October 11, 2010, Circle One Global, Inc., notified EPA that it was withdrawing this petition. Contact: Shanaz Bacchus; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

2. PP 8F7489 (2-phenethyl propionate). EPA issued a notice in the **Federal Register** of April 8, 2009 (74 FR 15976) (FRL–8409–4) (EPA–HQ–OPP–2009–0222), which announced the filing of a pesticide petition (PP 8F7489) by EcoSmart Technologies, Inc., 3600 Mansell Rd., Suite 150, Alpharetta, GA 30022. This petition proposed that EPA amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the biochemical pesticide, 2-phenethyl propionate, in or on all agricultural commodities. On March 9, 2010, EcoSmart Technologies, Inc., notified EPA that it was withdrawing this petition. Contact: Cheryl Greene; telephone number: (703) 308–0352; e-mail address: *greene.cheryl@epa.gov.*

3. PP 9E7635 (Tobacco mild green mosaic tobamovirus). EPA issued a notice in the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8) (EPA–HQ–OPP–2010–0055), which announced the filing of a pesticide petition (PP 9E7635) by Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Rd., East, Suite 201W., Princeton, NJ 08540 (on behalf of BioProdex, Inc., 8520 NW 2 Place, Gainesville, FL 32607–1423). This petition proposed that EPA amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the herbicide, *Tobacco mild green mosaic tobamovirus,* in or on all food commodities. On January 10, 2011, BioProdex, Inc., notified EPA that it was withdrawing this petition. Contact: Jeannine Kausch; telephone number:

(703) 347–8920; e-mail address: *kausch.jeannine@epa.gov.*

4. PP 9F7587 (Paecilomyces fumosoroseus strain FE 9901). EPA issued a notice in the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8) (EPA–HQ–OPP–2010–0092), which announced the filing of a pesticide petition (PP 9F7587) by Technology Sciences Group, Inc., 1150 18th St., NW., Suite 1000, Washington, DC 20036 (on behalf of Natural Industries, Inc., 6223 Theall Rd., Houston, TX 77066). This petition proposed that EPA amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the mycoinsecticide, *Paecilomyces fumosoroseus* strain FE 9901, in or on vegetable and herb crops grown in greenhouses. On February 17, 2011, Technology Sciences Group, Inc., notified EPA that it was withdrawing this petition. Contact: Kathleen Martin; telephone number: (703) 308–2857; e-mail address: *martin.kathleen@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 25, 2011.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–8549 Filed 4–12–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 14, 2011, from 1 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 20, 2011.

B. Business Reports

- FCSIC Financial Reports.
- Report on Insured and Other Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Presentation of 2010 Audits Results.

Closed Sesson

- FCSIC Report on System Performance.

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor.

Dated: April 7, 2011.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2011–8784 Filed 4–12–11; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items From April 7, 2011, Open Meeting

April 6, 2011.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Thursday, April 7, 2011, Open Meeting and previously listed in the Commission's Notice of March 31, 2011. These items have been adopted by the Commission.

Item No.	Bureau	Subject
5	WIRELESS TELE–COMMUNICATIONS	TITLE: Amending Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that will help to fill gaps in wireless coverage and expand broadband in rural and difficult-to serve areas, while protecting wireless networks from harm.
6	CONSUMER & GOVERNMENTAL AFFAIRS ..	TITLE: Structure and Practices of the Video Relay Service Program (CG Docket No. 10–51). SUMMARY: The Commission will consider a Report and Order that will adopt rules to detect and prevent fraud and abuse in the provision of video relay service ("VRS"). Also, a Further Notice of Proposed Rulemaking Proposes to require all VRS providers to obtain certification from the FCC under new, tighter certification procedures in order to receive compensation from the TRS Fund.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–9030 Filed 4–11–11; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011284–069.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would clarify the authority of members to discuss and agree on matters relating to how chassis are made available to the market place.

Agreement No.: 012072–001.

Title: NYK/Yang Ming Americas North-South Service Slot Charter Agreement.

Parties: Nippon Yusen Kaisha; and Yan Ming (America) Corp.

Filing Party: Patricia M. O'Neill, Esq.; Corporate Counsel; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The amendment deletes Hanjin Shipping as a party to the Agreement.

Agreement No.: 012105–001.

Title: SCM Lines Transportes/CCNI Agreement.

Parties: Compania Chilena de Navegacion Interoceanica S.A. and SCM Lines Transportes Maritimos Sociedade Unipessoal, LDA.

Filing Party: John P. Vayda, Esq.; Nourse & Bowles, LLP; One Exchange Plaza; 55 Broadway; New York, NY 10006–3030.

Synopsis: The amendment expands the geographic scope of the agreement to include the U.S. East Coast, Mexico, Colombia, Venezuela, Jamaica, and the Dominican Republic. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: April 8, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–9003 Filed 4–12–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 28, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Susan Marie Horton, Cheney, Washington; Raymond Lee Pittman, Jr., Mesa, Arizona; Rosa Maria Pittman, Spokane, Washington; Ted Davis Rhodes, Spokane Valley, Washington; and Wheatland Bank Employee Stock Ownership Plan, Spokane, Washington;* together as a group acting in concert to retain voting shares of Community Financial Group, Inc., and thereby indirectly retain voting shares of Wheatland Bank, both of Spokane, Washington.

2. *Wheatland Bank Employee Stock Ownership Plan, Spokane, Washington, and its trustees, Susan Marie Horton, Cheney, Washington; Dennis Dale Bly, Davenport, Washington; and Jayne Therese Deife, Marlin, Washington;* to retain voting shares of Community Financial Group, Inc., and thereby indirectly retain voting shares of Wheatland Bank, both of Spokane, Washington.

Board of Governors of the Federal Reserve System, April 8, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–8821 Filed 4–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3033]

Oreck Corporation; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 9, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to a "Oreck, File No. 102 3033" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade 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 Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the

Continued

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/oreck* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the weblink *https://ftcpublic.commentworks.com/ftc/oreck.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Oreck, File No. 102 3033" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Matthew Gold (415–848–5176), FTC, Western Region, San Francisco, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2010), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Oreck Corporation ("respondent"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves the advertising, marketing, and sale of the Oreck Halo vacuum cleaner and the Oreck ProShield Plus portable air cleaner. Oreck has marketed these products directly to consumers through numerous Web sites, as well as through company-owned and franchised retail stores and third-party retail outlets.

The Oreck Halo is an upright vacuum cleaner that has a built-in light chamber and a HEPA filter bag. The light chamber generates ultraviolet light in the C spectrum onto floor surfaces while vacuuming. According to the FTC complaint, Oreck has promoted the Oreck Halo as effective, through normal use, in killing virtually all bacteria, viruses, germs, mold and allergens that exist on carpets and other floor surfaces.

Specifically, the FTC complaint alleges that respondent represented, in various advertisements, that the Oreck Halo:
(1) Substantially reduces the risk of or prevents the flu; (2) substantially reduces the risk of or prevents other illnesses or ailments caused by bacteria, viruses, molds, and allergens, such as the common cold, diarrhea, upset stomachs, asthma, and allergy symptoms; and (3) will eliminate all or virtually all common germs and allergens found on the floors in users' homes. The complaint also alleges that Oreck claimed that the Oreck Halo's UV–C light is effective against germs, bacteria, dust mites, mold and viruses embedded in carpets. The complaint alleges that all of these claims are unsubstantiated and thus violate the FTC Act.

The FTC complaint also alleges that Oreck represented, in various advertisements, that the Oreck ProShield Plus portable air cleaner:
(1) Substantially reduces the risk of or prevents the flu; (2) substantially reduces the risk of or prevents other illnesses or ailments caused by bacteria, viruses, molds, and allergens, such as the common cold, asthma, and allergy symptoms; and (3) will eliminate all or virtually all airborne particles from a typical household room under normal living conditions. The complaint alleges that all of these claims are unsubstantiated and thus violate the FTC Act.

The complaint further alleges that Oreck claimed that scientific tests prove that users of the Oreck Halo will eliminate or virtually eliminate many common germs and allergens found on the floors in their homes; and that scientific tests prove that the Oreck ProShield Plus will eliminate or virtually eliminate many common viruses, germs and allergens from a typical household room under normal living conditions. According to the complaint, these claims are false and thus violate the FTC Act.

Finally, the complaint alleges that Oreck provided advertisements to its franchised stores for use in their marketing and sale of the Oreck Halo and the Oreck ProShield. According to the complaint, Oreck thereby provided means and instrumentalities to distributors of its products in furtherance of the deceptive and

Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

misleading acts or practices alleged in the complaint.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I of the proposed order addresses the allegedly unsubstantiated claims regarding the Oreck Halo. Part I covers any representation that the Oreck Halo or any other vacuum cleaner: (1) Reduces the risk of or prevents the flu; (2) reduces the risk of or prevents illnesses or ailments caused by bacteria, viruses, molds, or allergens, such as the common cold, diarrhea, upset stomachs, asthma and allergy symptoms; (3) will eliminate all or virtually all germs, bacteria, dust mites, molds, viruses or allergens from a user's floor; and (4) will eliminate any percent or numerical quantity of germs, bacteria, dust mites, molds, viruses or allergens from a user's floor. Part I also applies to representations that ultraviolet light is effective against germs, bacteria, dust mites, molds, viruses or allergens embedded in carpets. Part I prohibits Oreck from making any of the above representations unless the representation is non-misleading and, at the time of making such representation, Oreck possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. The proposed order defines "competent and reliable scientific evidence" as "tests, analyses, research or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results."

Part II of the proposed order addresses the allegedly unsubstantiated claims regarding the Oreck ProShield Plus. Part II covers any representation that the Oreck ProShield Plus or any other air cleaner: (1) Reduces the risk of or prevents the flu; (2) reduces the risk of or prevents illnesses or ailments caused by bacteria, viruses, molds, or allergens, such as the common cold, asthma and allergy symptoms; (3) will eliminate all or virtually all indoor airborne particles under normal living conditions; and (4) will eliminate any percent or numerical quantity of indoor air contaminants under normal living conditions. Part II prohibits Oreck from making any of the above representations unless the representation is non-misleading and, at the time of making such representation, Oreck possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making representations, other than representations covered under Parts I or II, about the absolute or comparative health benefits of any product, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that the Oreck Halo or ProShield Plus eliminate or virtually eliminate many common germs, viruses or allergens from the user's floor or air. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part VI of the proposed order requires the payment of $750,000 intended for redress to consumers. To facilitate the payment of redress, Part V of the proposed order requires Oreck to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the Oreck Halo or the Oreck ProShield Plus from January 1, 2009 through August 31, 2010.

Part VII of the proposed order requires Oreck to send a letter to all of its franchisees requesting that they immediately stop using all advertising and marketing materials previously provided to them by Oreck. The required letter is appended to the proposed order as Attachment A.

Parts VIII, IX, X and XI of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–8757 Filed 4–12–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0321]

30-Day Notice; Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Title: HHS Web Site Customer Satisfaction Survey—0990–0321—Reinstatement with change—Office of the Assistant Secretary for Public Affairs.

Abstract: The results of the HHS Web Site Customer Satisfaction Survey will be used to ensure that the content on the HHS Web sites meets visitor needs and expectations. The results will also determine if the site is easy to use and the content easy to understand.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden hours per response (in hrs.)	Total burden hours
Survey	48,000	1	12/60	9,600

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–8796 Filed 4–12–11; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recommendations on In Vitro Ocular Safety Testing Methods and Strategies and Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints for Ocular Safety Testing

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Notice of availability.

SUMMARY: U.S. Federal agency responses to ICCVAM test method recommendations on alternative testing methods and strategies proposed to further reduce and refine the use of animals for assessing the ocular hazard potential of chemicals and products are now available. ICCVAM recommended a pain management procedure that should always be used to avoid pain and distress when it is determined necessary to conduct the rabbit eye test for regulatory safety purposes. ICCVAM also recommended the Cytosensor Microphysiometer (CM) test method as a screening test (1) to identify some types of substances that will not cause sufficient injury to require eye hazard labeling and (2) to identify some types of substances that may cause permanent or severe eye injuries. ICCVAM previously forwarded recommendations to Federal agencies and made these recommendations available to the public (75 FR 57027). In accordance with the ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3), agencies have notified ICCVAM in writing of their findings and ICCVAM is making these responses available to the public. Federal agency responses are available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/ocutox/Transmit-2010.htm.* The ICCVAM recommendations are provided in ICCVAM test method evaluation reports that are available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/ocutox/OcuAnest-TMER.htm, http://iccvam.niehs.nih.gov/methods/ocutox/MildMod-TMER.htm, http://iccvam.niehs.nih.gov/methods/ocutox/AMCP–TMER.htm,* and *http://iccvam.niehs.nih.gov/methods/ocutox/LVET.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Environmental Protection Agency (EPA) requested that ICCVAM (1) evaluate the current validation status of the bovine corneal opacity and permeability (BCOP), hen's egg test–chorioallantoic membrane (HET–CAM), isolated chicken eye (ICE), and isolated rabbit eye (IRE) test methods; (2) identify *in vivo* ocular toxicity reference data to support the validation of in vitro test methods; (3) explore ways of alleviating pain and distress from current *in vivo* ocular safety testing; and (4) review the state of the science and the availability of *in vitro* test methods for assessing mild or moderate ocular irritants. The highest priority activity, an evaluation of the BCOP, HET–CAM, ICE, and IRE test methods for their usefulness and limitations for identifying potential ocular corrosives and severe irritants, was completed in 2006 (NIH Publication No. 07–4517). Based on this evaluation, U.S. Federal agencies subsequently accepted the BCOP and ICE test methods for certain regulatory testing purposes without the need for animal testing. The Organisation for Economic Co-operation and Development (OECD) subsequently adopted the BCOP and ICE test methods in 2009 as international OECD Test Guidelines 437 and 438, respectively (OECD 2009a, OECD 2009b). The International Organization for Standardization (ISO) adopted the BCOP and ICE test methods as ISO Standard 10993–10 in 2010 (ISO 2010).

ICCVAM recently completed additional test method evaluations relevant to the original EPA nomination and a subsequent EPA request that ICCVAM evaluate a proposed in vitro testing strategy for identifying the ocular hazard potential of antimicrobial cleaning products. Information is provided about ICCVAM's evaluation and the committee's recommendations for the alternative testing methods and strategies proposed to further reduce and refine the use of animals for assessing the ocular hazard potential of chemicals and products in four ICCVAM Test Method Evaluation Reports: (1) *Recommendations for Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints to Avoid or Minimize Pain and Distress in Ocular Safety Testing* (NIH Publication No. 10–7514), (2) *Current Validation Status of In Vitro Test Methods Proposed for Identifying Eye Injury Hazard Potential of Chemicals and Products* (NIH Publication No. 10–7553), (3) *Current Validation Status of a Proposed In Vitro Testing Strategy for U.S. Environmental Protection Agency Ocular Hazard Classification and Labeling of Antimicrobial Cleaning Products* (NIH Publication No. 10–7513), and (4) *Recommendation to Discontinue Use of the Low Volume Eye Test for Ocular Safety Testing* (NIH Publication No. 10–7515).

Agency Responses to ICCVAM Recommendations

In September 2010, ICCVAM forwarded final test method recommendations for ocular safety testing methods and strategies to U.S. Federal agencies for consideration, in accordance with the ICCVAM Authorization Act of 2000 (42 U.S.C.

285*l*–3) (75 FR 57027). The ICCVAM Authorization Act requires member agencies to review ICCVAM test method recommendations and notify ICCVAM in writing of their findings no later than 180 days after receipt of recommendations. The Act also requires ICCVAM to make ICCVAM recommendations and agency responses available to the public. Agency responses should include identification of relevant test methods for which the ICCVAM test method recommendations may be added or substituted and indicate any revisions or planned revisions to existing guidelines, guidances, or regulations to be made in response to these recommendations.

ICCVAM agencies concurred with the test method recommendations for the in vitro ocular safety testing methods and strategies and support the routine use of topical anesthetics, systemic analgesics, and humane endpoints for ocular safety testing. Several agencies also indicated that they would communicate the ICCVAM recommendations to stakeholders and encourage their appropriate use. Agency responses are available at *http://iccvam.niehs.nih.gov/methods/ocutox/Transmit-2010.htm.*

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about ICCVAM and NICEATM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

References

ICCVAM. 2006. ICCVAM Test Method Evaluation Report: In Vitro Ocular Toxicity Test Methods for Identifying Severe Irritants and Corrosives. NIH Publication No. 07– 4517. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_tmer.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Recommendations for Routine Use of Topical Anesthetics, Systemic Analgesics, and Humane Endpoints to Avoid or Minimize Pain and Distress in Ocular Safety Testing. NIH Publication No. 10–7514. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/OcuAnest-TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Current Validation Status of *In Vitro* Test Methods Proposed for Identifying Eye Injury Hazard Potential of Chemicals and Products. NIH Publication No. 10–7553. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/MildMod-TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Current Validation Status of a Proposed *In Vitro* Testing Strategy for U.S. Environmental Protection Agency Ocular Hazard Classification and Labeling of Antimicrobial Cleaning Products. NIH Publication No. 10– 7513. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/AMCP-TMER.htm.*

ICCVAM. 2010. ICCVAM Test Method Evaluation Report: Recommendation to Discontinue Use of The Low Volume Eye Test for Ocular Safety Testing. NIH Publication No. 10–7515. Research Triangle Park, NC: NIEHS. Available: *http://iccvam.niehs.nih.gov/methods/ocutox/LVET.htm.*

ISO. 2010. Biological evaluation of medical devices—10993 Part 10: Tests for irritation and skin sensitization. Available for purchase at: *http://www.iso.org/iso/home.htm.*

OECD. 2009a. Test Guideline 437. Bovine Corneal Opacity and Permeability Test Method for Identifying Ocular Corrosives and Severe Irritants, adopted September 2009. In: OECD Guidelines for Testing of Chemicals. Paris: OECD. Available: *http://www.oecd-ilibrary.org/environment/test-no-437-bovine-corneal-opacity-and-permeability-test-method-for-identifying-ocular-corrosives-and-severe-irritants_9789264076303-en.*

OECD. 2009b. Test Guideline 438. Isolated Chicken Eye Test Method for Identifying Ocular Corrosives and Severe Irritants, adopted September 2009. In: OECD Guidelines for Testing of Chemicals. Paris: OECD. Available: *http://www.oecd-ilibrary.org/environment/test-no-438-isolated-chicken-eye-test-method-for-identifying-ocular-corrosives-and-severe-irritants_9789264076310-en.*

Dated: April 1, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–8938 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7031–NC]

Announcement of Notice; Proposed Establishment of a Federally Funded Research and Development Center—First Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces our intention to sponsor Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. This is the first of three notices which must be published over a 90-day period in order to advise the public of the agency's intention to sponsor an FFRDC issued under the authority of 48 CFR 35.017.

DATES: We must receive comments on or before July 5, 2011.

ADDRESSES: Comments on this notice must be mailed to the Centers for Medicare & Medicaid Services, Candice Savoy, Contracting Officer, 7500 Security Boulevard, Mailstop C2–01–10, Baltimore, MD 21244 or e-mail at *Candice.Savoy@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Candice Savoy, (410) 786–7494.

SUPPLEMENTARY INFORMATION: The Centers for Medicare & Medicaid Services (CMS), an operating division within the Department of Health and Human Services (DHHS), intends to sponsor a studies and analysis, Delivery System, Simulations, and Cost Modeling Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. Some of the broad task areas that will be utilized include Strategic/Tactical Planning, Conceptual Planning, Design and Engineering, Procurement Assistance, Organizational Planning, Research and Development,

Continuous Process Improvement, IV&V/Compliance, and Security Planning. Further analysis will consist of expert advice and guidance in the areas of program and project management focused on increasing the effectiveness and efficiency of strategic information management, prototyping, demonstrations, and technical activities. This FFRDC may also be utilized by non-sponsors, other than CMS, within DHHS.

The FFRDC will be established under the authority of 48 CFR 35.017.

The Contractor will be available to provide a wide range of support including, but not limited to:

- Strategic/Tactical Planning, including assisting with planning for future CMS program policy, innovation, development, and support for Medicare and Medicaid.
- Conceptual Planning, including operations, analysis, requirements, procedures, and analytic support.
- Design and Engineering, including Technical Architecture Direction.
- Procurement Assistance, Review/Recommendations for Current Contract Processes to include, Contract Reform, Technical Guidance, Price and Cost Estimating, Support and Source Selection Evaluation Support.
- Organizational Planning, including Functional and Gap analysis.
- Research and Development, Assessment of New Technologies and advice on medical and technical innovation and health information.
- Continuous Process Improvement, ILC/current practices review and recommendations, implementation of best practices and code reviews.
- IV&V/Compliance, DUA Surveillance and Web Site Content Review.
- Security, including Security Assessments and Security Test and Evaluations (ST&E). Identify, define, and resolve problems as an integral part of the sponsor's management team.
- Providing independent analysis about DHHS vulnerabilities and the effectiveness of systems deployed to make DHHS more effective in providing healthcare services and implementation of new healthcare initiatives;
- Providing intra-departmental and inter-agency cross-cutting, risk-informed analysis of alternative resource approaches;
- Developing and deploying analytical tools and techniques to evaluate system alternatives (for example, policy-operations-technology tradeoffs, etc.), and life-cycle costs that have broad application across CMS;
- Developing measurable performance metrics, models, and simulations for determining progress in securing DHHS data or other authorized data sources, (non-DHHS data sources, such as the census data or DOL data, VA, DOD, data in developing performance metrics, and models);
- Providing independent and objective operational test and evaluation analysis support;
- Developing recommendations for guidance on the best practices for standards, particularly to improve the inter-operability of DHHS components;
- Assessing technologies and evaluating technology test-beds for accurate simulation of operational conditions and delivery system innovation models;
- Supporting critical thinking about the DHHS enterprise, business intelligence and analytic tools that can be applied consistently across DHHS and CMS programs;
- Supporting systems integration, data management, and data exchange that contribute to a larger DHHS intra and inter-agency enterprise as well as collaboration with State, local Tribal governments, the business sector (for-profit and not-for-profits), academia and the public;
- Providing recommendations for standards for top-level DHHS systems requirements and performance metrics best practices for an integrated DHHS approach to systems solutions and structured and unstructured data architecture; and
- Understanding key DHHS organizations and their specific role and major acquisition requirements and support them in the requirements development phase of the acquisition lifecycle.
- The FFRDC shall function so effectively as to act as an agent for the sponsor in the design and pursuit of mission goals.
- The FFRDC shall provide rapid responsiveness to changing requirements for personnel in all aspects of strategic, technical and program management.
- The FFRDC shall recognize Government objectives as its own objectives, partnering with the sponsor in pursuit of excellence in public service.
- The FFRDC shall allow for non-sponsor, other than CMS, work for operating Divisions within DHHS.

We are publishing this notice in accordance with 48 CFR 5.205(b) of the Federal Acquisition Regulations (FAR), to enable interested members of the public to provide comments on this proposed action. This is the first of three notices issued under the authority of 48 CFR 5.205(b).

The Request for Proposal (RFP) will be posted on FedBizOpps in the Summer of 2011. Alternatively, a copy can be received by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: April 7, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–8942 Filed 4–12–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Administration for Children and Families' Office of Head Start (OHS), HHS.

ACTION: Notice.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of one-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

DATES AND LOCATIONS: Office of Head Start Tribal Consultation Sessions will be held as follows:

Friday, April 29, 2011—Albuquerque, New Mexico—Indian Pueblo Cultural Center, 2401 12th Street, NW., Albuquerque NM 87104.

Thursday, May 19, 2011—Marksville, Louisiana—Paragon Casino Resort, 6773 East Tunica Drive, Marksville, LA 71351.

FOR FURTHER INFORMATION CONTACT: Camille Loya, Tribal Policy Lead, e-mail *Camille.Loya@acf.hhs.gov* or phone (202) 401–5964. Additional information and online meeting registration is available at *http://www.headstartresourcecenter.org.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human

Services announces OHS Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs in Regions I, II, IV, and VI. The Consultation Session for Region VI will take place Friday, April 29, 2011, at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, immediately following the Department of Health and Human Services Regional Consultations session. The Consultation Session for Regions I, II, and IV will take place Thursday, May 19, 2011, at the Paragon Casino Resort in Marksville, Louisiana, immediately following the United South and Eastern Tribes, Inc. 2011 Semi-annual Meeting. We are convening the OHS Tribal Consultations in conjunction with other Tribal Leader events in order to minimize the financial and travel burden for participants.

The agendas for both scheduled OHS Tribal Consultations will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2010 OHS Tribal Consultations.

Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for the Albuquerque or Marksville Consultation Sessions should contact Camille Loya at *Camille.Loya@acf.hhs.gov* at least three days in advance of the Session. Proposals should include a brief description of the topic area along with the name and contact information of the suggested presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C.9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the Tribe. The letter should be submitted at least three days in advance of the Consultation Session to Camille Loya at (202) 205–9721 (fax). Other representatives of Tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each Consultation Session will be prepared and made available within 90 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Camille Loya at *Camille.Loya@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in the report without attribution, along with topics of concern and recommendations. Hotel and logistical information for all Consultation Sessions has been sent to Tribal leaders via e-mail and posted on the Head Start Resource Center Web site at *http://www.headstartresourcecenter.org.*

Dated: April 6, 2011.

Ann Linehan,

Deputy Director, Office of Head Start.

[FR Doc. 2011–8999 Filed 4–12–11; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0221]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study on Consumer Responses to Labeling Statements on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled "Experimental Study on Consumer Responses to Labeling Statements on Food Packages."

DATES: Submit either electronic or written comments on the collection of information by June 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study on Consumer Responses to Labeling Statements on Food Packages; 21 U.S.C. 393(d)(2)(C)—(OMB 0910–NEW)

I. Background

The Nutrition Labeling and Education Act requires almost all packaged foods to bear nutrition labeling in the form of the Nutrition Facts label. The law also allows manufacturers to provide other nutrition information on labels in the form of various types of statements, including claims, as long as such statements comply with the regulatory limits that govern the use of each type of statement. There are three types of

claims that the food industry can voluntarily use on food labels: (1) Health claims, (2) nutrient content claims (*e.g.,* "Low fat"), and (3) structure/function claims (*e.g.,* "Calcium builds strong bones."). There are three types of health claims: (1) Those that meet the Significant Scientific Standard (*e.g.,* "Adequate calcium and Vitamin D throughout life, as part of a well-balanced diet, may reduce the risk of osteoporosis."), (2) those that are based on authoritative statements from a recognized scientific body of the U.S. government or the National Academy of Sciences (*e.g.,* "Diets containing foods that are a good source of potassium and that are low in sodium may reduce the risk of high blood pressure and stroke."), and (3) qualified health claims that are granted under enforcement discretion (*e.g.,* "Supportive but not conclusive research shows that consumption of EPA and DHA omega-3 fatty acids may reduce the risk of coronary heart disease. One serving of [Name of the food] provides [ ] grams of EPA and DHA omega-3 fatty acids. [See nutrition information for total fat, saturated fat, and cholesterol content.]"). Although the different types of claims are regulated differently, they all must be truthful and not misleading (Ref. 1).

With the increased public interest in identifying healthier foods, U.S. food processors have been adding nutritional information in the form of nutrition symbols to food labels in addition to claims. Examples of nutrition symbols that have been or are planned to be used on food labels include nutrient-specific disclosure (*e.g.,* "Guideline Daily Amounts") (Ref. 2), calorie declaration (Ref. 3), summary product rating (*e.g.,* "Smart Spot") (Ref. 4), and a hybrid summary indicator with nutrient-specific disclosure (*e.g.,* "Sensible Solution: Good Source of Calcium, Good Sources of 8 Vitamins and Minerals") (Ref. 5). Claims related to non-nutritional product characteristics are also used in food labeling. The claims may feature, among other things, statements about how foods are grown or made (*e.g.,* "Organic" and "All Natural") or absence of a substance (*e.g.,* "Gluten-free").

Many consumers use claims and the Nutrition Facts label in food choice decisions (Refs. 6 through 8). While some products carry only a single labeling statement (*e.g.,* either one claim or one symbol) on their packages, many products carry two or more labeling statements. In addition, on the same package the attributes of one statement may differ from those of other statements in terms of featured nutrient, type of claim, framing of statement, nature of statement, and presentation of statement. For example, a package may display one or more statements such as symbols relating to nutrition content, statements in words relating to the presence of certain nutrients, statements in words relating to the absence of other nutrients, statements in words relating the health benefits of consuming foods containing or not containing certain other nutrients, and statements in words describing how the product was produced. Moreover, all of those symbols and statements are distributed in various places on the package in different font sizes and colors.

There exists a large body of literature on the impacts of different types of labeling statements on consumer perceptions and choices of products (Refs. 9 and 10). The majority of the research, including the consumer research that the Agency has previously conducted (Refs. 11 and 12), has focused on single labeling statements by eliciting study participants' reactions to variants of a given statement. An advantage of this research approach is that it helps isolate the effects of individual statements and avoid potential confounding effects caused by the presence of other statements. A disadvantage of this research approach, however, is that it does not necessarily reflect the labels consumers see in the marketplace. In particular, the existing literature provides little information about how the coexistence of two or more different labeling statements affects product perceptions and choices. This information, however, is critical for understanding the roles played by labeling statements in dietary decisions.

Research suggests consumer product perceptions and purchase decisions can be influenced by labeling statements and different labeling statements may have different influences (Refs. 9 through 12). Therefore, the FDA, as part of its effort to promote public health, proposes to use this study to explore consumer responses to food labels that bear multiple labeling statements. Specifically, the study plans to examine: (1) Consumer responses to food labels that exhibit various combinations of the characteristics of labeling statements (*i.e.,* nutrients, types of claim, framing of statement, nature of statement, and presentation of statement), (2) whether and how consumer responses to one of the characteristics may be affected by other characteristics (*i.e.,* the interactions between different characteristics of labeling statements), and (3) whether and how labeling statements affect the use of the Nutrition Facts label.

The proposed collection of information is a controlled randomized experimental study. The study will use a 15-minute Web-based survey to collect information from 4,000 English-speaking adult members of an online consumer panel maintained by a contractor. The study will aim to produce a sample that reflects the U.S. Census on gender, education, age, and ethnicity/race.

The study will randomly assign each of its participants to view two label images from a set of food labels that will be created for the study and systematically varied in the (1) number of statements (none, one, or two); (2) featured nutrient and substance (*e.g.,* fat, sodium, sugars, fiber, whole grain, calories, antioxidant vitamins, or allergen); (3) type of statement (text or graphic, specifically the Guideline Daily Amounts nutrition symbol); (4) framing of statement ("good source of," "low," or "free"); (5) nature of statement (nutrition or method of production such as "natural"); (6) type size of statement (large or small); and (7) featured product (*e.g.,* snacks, breakfast cereals, breads, soups, or frozen meals). With regard to claims, the study will focus on examples of nutrient content claims and structure/function claims, which can be found on many food packages (Ref. 13). All label images will be mock-ups resembling food labels that may be found in the marketplace. Images will show product identity (*e.g.,* potato chips), but not any real or fictitious brand name. The study will provide interested participants access to the Nutrition Facts label, but not together with a product image.

The survey will ask its participants to view label images and answer questions about their perceptions and reactions related to the viewed product and label. Product perceptions (*e.g.,* healthiness, potential health benefits, levels of nutrients and substances, taste, and safety) and label perceptions (*e.g.,* helpfulness and credibility) will constitute the measures of responses in the experiment. To help understand the data, the survey will also collect information about participants' background, such as consumption, purchase, perception, and familiarity with a category of food; awareness and knowledge of nutrients and substances; dietary interests; motivation regarding label use and health literacy; and health status and demographic characteristics.

The study is part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. Results of the study will be used primarily to enrich the Agency's understanding of how

multiple claims and other labeling statements on food packages may affect how consumers perceive a product or a label, which may in turn affect their dietary choices. Results of the study will not be used to develop population estimates.

To help design and refine the questionnaire, FDA plans to conduct cognitive interviews by screening 72 panelists in order to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour) and each cognitive interview is expected to take 1 hour. The total for cognitive interview activities is 15 hours (6 hours + 9 hours). Subsequently, we plan to conduct pretests of the questionnaire before it is administered in the study. We expect that 1,600 invitations, each taking 2 minutes (0.033 hour), will need to be sent to panelists to have 200 of them complete a 15-minute (0.25 hour) pretest. The total for the pretest activities is 106 hours (53 hours + 50 hours). For the survey, we estimate that 32,000 invitations, each taking 2 minutes (0.033 hour) to complete, will need to be sent to the consumer panel to have 3,000 of its members complete a 15-minute (0.25 hour) questionnaire. The total for the survey activities is 2,056 hours (1,056 hours + 1,000 hours). Thus, the total estimated burden is 2,174 hours. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Cognitive interview screener	72	1	72	5/60	6
Cognitive interview	9	1	9	1	9
Pretest invitation	1,600	1	1,600	2/60	53
Pretest	200	1	200	15/60	50
Survey invitation	32,000	1	32,000	2/60	1,056
Survey	4,000	1	4,000	15/60	1,000
Total					2,174

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration. Claims That Can Be Made for Conventional Foods and Dietary Supplements. September 2003. Available at *http://www.fda.gov/Food/LabelingNutrition/LabelClaims/ucm111447.htm.*
2. Kellogg's. Nutrition at a Glance. 2010. Available at *http://www.kelloggnutrition.com/learn-about-labels/nutrition-at-a-glance.html.*
3. PepsiCo. Nutrition Labeling. 2010. Available at *http://www.pepsico.com/Purpose/Human-Sustainability/Nutrition-Labeling.html.*
4. Schmit, J. "PepsiCo Labels Some of Its Products 'Smart,'" *USA Today,* September 2, 2004. Available at *http://www.usatoday.com/money/industries/food/2004–09–02-smart-spot_x.htm.*
5. Kraft Foods. Sensible Solution. 2010. Available at *http://www.kraftrecipes.com/kf/HealthyLiving/SensibleSolution/SensibleSolution_Landing.aspx.*
6. Centers for Disease Control and Prevention. 2005–2006 National Health and Examination Survey questionnaire, Diet Behavior and Nutrition section. Unpublished results of questions DBQ.750 and DBQ.780. Questionnaire is available at *http://www.cdc.gov/nchs/data/nhanes/nhanes_05_06/sp_dbq_d.pdf.*
7. U.S. Food and Drug Administration. 2008 Health and Diet Survey. March 20, 2010. Available at *http://www.fda.gov/Food/ScienceResearch/ResearchAreas/ConsumerResearch/ucm193895.htm.*
8. Food Marketing Institute. 2009 U.S. Grocery Shopper Trends Survey. Washington, DC 2009.
9. Drichoutis, A.C., Lazaridis, P. and Nayga, R.M., "Consumers' Use of Nutritional Labels: a Review of Research Studies and Issues," *Academy of Marketing Science Review,* 2006(9), 2006. Available at *http://www.amsreview.org/articles/drichoutis09-2006.pdf.*
10. Lähteenmäki, L., Lampila, P.. Grunert, K., Boztug, Y., Ueland, Ø., Åström, A. and Martinsdóttir, E., "Impact of Health-Related Claims on the Perception of Other Product Attributes," *Food Policy,* 23: 230–9. 2010.
11. Labiner-Wolfe, J., Lin, C.-T. J. and Verrill L., "Effect of Low Carbohydrate Claims on Consumer Perceptions about Food Products' Healthfulness and Helpfulness for Weight Management," *Journal of Nutrition Education and Behavior,* 42(5): 315–320, 2010.
12. Roe, B., Levy, A.S., and Derby, B.M., "The Impact of Health Claims on Consumer Search and Product Evaluation Outcomes: Evidence from FDA Experimental Data," *Journal of Public Policy and Marketing,* 18(1): 89–105, 1999.
13. LeGault, L., Brandt, M.B., McCabe, N., Adler, C., Brown, A.-M., and Brecher, S., "2000–2001 Food Label and Package Survey: An Update on Prevalence of Nutrition Labeling and Claims on Processed, Packaged Foods," *Journal of the American Dietetic Association,* 104(6): 952–8, 2004.

Dated: April 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8908 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0237]

Agency Information Collection Activities; Proposed Collection; Comment Request; Applications for Food and Drug Administration Approval To Market a New Drug; Postmarketing Reports; Reporting Information About Authorized Generic Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the

Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements for a New Drug Application (NDA) holder to notify the Agency if an authorized generic drug is marketed by clearly including this information in an easily accessible place in the annual report and by sending a copy of the relevant portion of the annual report to a central contact point in the Agency.

DATES: Submit either electronic or written comments on the collection of information by June 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the OMB control number 0910–0646. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Applications for Food and Drug Administration Approval To Market a New Drug; Postmarketing Reports; Reporting Information About Authorized Generic Drugs—21 CFR 314.81(b)(2)—(OMB Control Number 0910–0646—Extension)

In the **Federal Register** of July 28, 2009 (74 FR 37163), FDA published a final rule that required the holder of an NDA to notify the Agency if an authorized generic drug is marketed by clearly including this information in annual reports in an easily accessible place and by sending a copy of the relevant portion of the annual reports to a central contact point. We took this action as part of our implementation of the Food and Drug Administration Amendments Act, which requires that FDA publish a list of all authorized generic drugs included in an annual report after January 1, 1999, and that the Agency update the list quarterly. We initially published this list on June 27, 2008, on the Internet and notified relevant Federal Agencies that the list was published, and we will continue to update it.

During the past several years, FDA has been reviewing annual reports it has received under § 314.81(b)(2) (21 CFR 314.81(b)(2)) to discern whether an authorized generic drug is being marketed by the NDA holder. Based on information learned from this review and based on the number of annual reports the Agency currently receives under § 314.81(b)(2), we estimate that we will receive approximately 400 annual reports containing the information required under § 314.81(b)(2)(ii)(*b*), for authorized generic drugs that were marketed during the time period covered by an annual report submitted after January 1, 1999. Based on the number of sponsors that currently submit annual reports, we estimate that approximately 60 sponsors will submit these 400 annual reports with authorized generics. As indicated in table 1 of this document, we are estimating that the same number of annual reports will be submitted each year from the same number of sponsors containing the information required under § 314.81(b)(2)(ii)(*b*), and that the same number of copies of that portion of each annual report containing the authorized generic drug information will be submitted from the same number of sponsors. Concerning the hours per response, based on our estimate of 40 hours to prepare each annual report currently submitted under § 314.81(b)(2), we estimate that sponsors will need approximately 1 hour to prepare the information required under § 314.81(b)(2)(ii)(*b*) for each authorized generic drug that was marketed during the time period covered by an annual report submitted after January 1, 1999; approximately 15 minutes to prepare the information required under § 314.81(b)(2)(ii)(*b*) for each subsequent annual report; and approximately 3 minutes to submit to FDA a copy of that portion of each annual report containing the authorized generic drug information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 314.81(b)(2)(ii)(*b*)	Number of respondents	Number of reponses per respondent	Total annual respondents	Average burden per response (in hours)	Total hours
Authorized generic drug information on first marketed generics in an annual report under § 314.81(b)(2)(ii)(b) ..	60	6.7	400	1	400
Authorized generic drug information submitted in each subsequent annual report	60	6.7	400	15/60	100

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR 314.81(b)(2)(ii)(*b*)	Number of respondents	Number of reponses per respondent	Total annual respondents	Average burden per response (in hours)	Total hours
The submission of a copy of that portion of each annual report containing authorized generic drug information	60	6.7	400	3/60	20
Total	.....	.....	.....	.....	520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8820 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0157]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning requests by sponsors of investigational new drugs and applicants for new drug approvals or biologics licenses for fast track designation as provided in the guidance for industry on fast track drug development programs.

DATES: Submit either electronic or written comments on the collection of information by June 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review—(OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the FD&C Act. The guidance discusses collections of information that are specified under section 506 of the FD&C Act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collection of information: (1) Fast track designation requests; (2) premeeting packages; and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the Agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the FD&C Act, an applicant who seeks fast track designation is required to submit a request to the Agency showing that the product: (1) Is intended for a serious or life-threatening condition and (2) has the potential to address an unmet

medical need. Mostly, the Agency expects that information to support a designation request will have been gathered under existing provisions of the FD&C Act, the PHS Act, or the implementing regulations. If such information has already been submitted to the Agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the Agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the Agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the FD&C Act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (*i.e.,* foreign studies), and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the FD&C Act, a sponsor must submit sufficient clinical data for the Agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that are not required under section 506(c) of the FD&C Act or any other provision of the FD&C Act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB control number 0910–0014); 356h (OMB control number 0910–0338); and 3397 (OMB control number 0910–0297).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the FD&C Act. The Agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research is approximately 97, and the number of requests received is approximately 118 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request.

Not all requests for fast track designation may meet the statutory standard. Of the requests for fast track designation made per year, the Agency granted 77 from 64 respondents, and for each of these granted requests a premeeting package was submitted to the Agency. FDA estimates that the preparation hours are approximately 100 hours per premeeting package.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Reporting activity	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Designation Request	97	1.22	118	60	7,080
Premeeting Packages	64	1.20	77	100	7,700
Total					14,780

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8818 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0627]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Food and Drug Administration Approval To Market a New Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 13, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0001. Also include the FDA docket number found

in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20852, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Application for FDA Approval to Market a New Drug—(OMB Control Number 0910–0001)—Extension

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or 505(j) of the FD&C Act is effective with respect to such drug. Under the FD&C Act, it is the sponsor's responsibility to provide the information needed by FDA to make a scientific and technical determination whether the product is safe and effective for use.

This information collection approval request is for all information requirements imposed on sponsors by the regulations under part 314 (21 CFR part 314), who apply for approval of a new drug application (NDA) or abbreviated new drug application (ANDA) in order to market or to continue to market a drug.

Section 314.50(a) requires that an application form (Form FDA 356h) be submitted that includes introductory information about the drug as well as a checklist of enclosures.

Section 314.50(b) requires that an index be submitted with the archival copy of the application and that it reference certain sections of the application.

Section 314.50(c) requires that a summary of the application be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the NDA contain the following technical sections about the new drug: Chemistry, manufacturing, and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; statistical; and pediatric use sections.

Section 314.50(e) requires the applicant to submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations be submitted with the archival copy.

Section 314.50(h) requires that patent information, as described under § 314.53, be submitted with the application. (The burden hours for § 314.50(h) are already approved by OMB under OMB control number 0910–0513 and are not included in the burden estimates in table 1 of this document.)

Section 314.50(i) requires that patent certification information be submitted in section 505(b)(2) applications for patents claiming the drug, drug product, or method of use.

Section 314.50(j) requires that applicants that request a period of marketing exclusivity submit certain information with the application.

Section 314.50(l) requires that an archival, review, and field copy of the application be submitted.

Section 314.52 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by a section 505(b)(2) applicant that relies on a listed drug. A 505(b)(2) applicant is required to amend its application at the time notice is provided to include a statement certifying that the required notice has been provided. A 505(b)(2) applicant also is required to amend its application to document receipt of the required notice.

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the FD&C Act. (The information collection burden estimate for 505(b)(2) applications is included in table 1 of this document under the estimates for § 314.50 (a), (b), (c), (d), (e), (f), and (k)).

Section 314.60 sets forth reporting requirements for sponsors who amend an unapproved application.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements be submitted to FDA for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (c)(2) sets forth requirements for expedited adverse drug experience postmarketing reports and follow-up reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A). (The burden hours for § 314.80(c)(1) and (c)(2) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.80(i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. (The burden hours for § 314.80(i) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.81(b)(1) requires that field alert reports be submitted to FDA (Form FDA 3331).

Section 314.81(b)(2) requires that annual reports be submitted to FDA (Form FDA 2252).

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling be submitted to FDA (Form FDA 2253).

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. (The burden hours for § 314.81(b)(3)(iii) are already approved by OMB under OMB control number 0910–0045 and are not included in the burden estimates in table 1 of this document.)

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. (The information collection burden estimate for NDA waiver requests is included in table 1 of this document under estimates for §§ 314.50, 314.60, 314.70, and 314.71.)

Section 314.93 sets forth requirements for submitting a suitability petition in accordance with § 10.20 (21 CFR 10.20) and § 10.30. (The burden hours for § 314.93 are already approved by OMB under 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.94(a) and (d) requires that an ANDA contain the following information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; patent certification.

Section 314.95 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by ANDA applicants.

Section 314.96 sets forth requirements for amendments to an unapproved ANDA.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for changes that require FDA approval.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements for ANDAs. (The burden hours for § 314.98(a) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.98(c) requires other postmarketing reports for ANDAs: Field alert reports (Form FDA 3331), annual reports (Form FDA 2252), and advertisements and promotional labeling (Form FDA 2253). (The information collection burden estimate for field alert reports is included in table 1 of this document under § 314.81(b)(1); the estimate for annual reports is included under § 314.81(b)(2); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i).)

Section 314.99(a) requires that sponsors comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection burden estimate for ANDA waiver requests is included in table 1 of this document under estimates for § 314.94(a) and (d) and §§ 314.96 and 314.97.)

Section 314.101(a) states that if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application be filed over protest.

Section 314.107(c) requires notice to FDA by the first applicant to submit a substantially complete ANDA containing a certification that a relevant patent is invalid, unenforceable, or will not be infringed of the date of first commercial marketing.

Section 314.107(e) requires that an applicant submit a copy of the entry of the order or judgment to FDA within 10 working days of a final judgment.

Section 314.107(f) requires that ANDA or section 505(b)(2) applicants notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner may also notify FDA of the filing of any legal action for patent infringement. If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within the 45-day period, the patent owner or approved application holder must submit to FDA a waiver in the specified format.

Section 314.110(b)(3) states that, after receipt of an FDA complete response letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(b)(3) are included under parts 10 through 16 (21 CFR parts 10 and 16) hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.110(c) states that, after receipt of a complete response letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.122(a) requires that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. (The burden hours for § 314.122(a) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. (The burden hours for § 314.122(d) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. (The burden hours for § 314.126(c) are already approved by OMB under 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.151(a) and (b) set forth requirements for the withdrawal of approval of an ANDA and the applicant's opportunity for a hearing and submission of comments. (The burden hours for § 314.151(a) and (b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. (The burden hours for § 314.151(c) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.153(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. (The burden hours for § 314.152(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.161(b) and (e) sets forth the requirements for submitting a petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. (The burden hours for § 314.161(b) and (e) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. (The burden hours for § 314.200(c), (d), and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(f) states that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. (The burden hours for § 314.200(f) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(g) states that a person who responds to a proposed order from FDA denying a request for a hearing provide sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing. (The burden hours for § 314.200(g) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. (The burden hours for § 314.430 are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.530(c) and (e) states that if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. (The burden hours for § 314.530(c) and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.530(f) requires that an applicant first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. (The burden hours for § 314.530(f) are already approved by OMB under 0910–0194 and are not included in the burden estimates in table 1 of this document.)

Section 314.610(b)(1) requires that applicants include a plan or approach to postmarketing study commitments in applications for approval of new drugs when human efficacy studies are not ethical or feasible, and provide status reports of postmarketing study commitments. (The information collection burden estimate for § 314.610(b)(1) is included in table 1 of this document under the estimates for §§ 314.50 (a), (b), (c), (d), (e), (f), and (k) and 314.81(b)(2)).

Section 314.610(b)(3) requires that applicants propose labeling to be provided to patient recipients in applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.610(b)(3) is included in table 1 of this document under the estimates for § 314.50(e)).

Section 314.630 requires that applicants provide postmarketing safety reporting for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The burden hours for § 314.630 are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.640 requires that applicants provide promotional materials for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.640 is included in table 1 of this document under the estimates for § 314.81(b)(3)(i)).

Respondents to this collection of information are all persons who submit an application or abbreviated application or an amendment or supplement to FDA under part 314 to obtain approval of a new drug, and any person who owns an approved application or abbreviated application.

In the **Federal Register** of December 17, 2010 (75 FR 79001), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section; [Form Number]	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
314.50(a), (b), (c), (d), (e), (f), and (k)	92	1.36	126	1,917	241,542
314.50(i) and 314.94(a)(12)	96	9.61	923	2	1,846
314.50(j)	71	4.02	286	2	572
314.52 and 314.95	71	3.66	260	16	4,160
314.60	349	21.67	7,564	80	605,120
314.65	10	1.20	12	2	24
314.70 and 314.71	620	4.91	3,050	150	457,500
314.72	104	2.98	310	2	620
314.81(b)(1) [3331]	147	2.57	378	8	3,024
314.81(b)(2) [2252]	656	13.84	9,084	40	363,360
314.81(b)(3)(i) [2253]	490	61.48	30,130	2	60,260
314.94(a)(1)–(11) and (d)	110	7.83	862	480	413,760
314.96	292	35.82	10,461	80	836,880
314.97	197	26.23	5,169	80	413,520
314.99(a)	53	2.30	122	2	244
314.101(a)	1	1	1	.50	.50
314.107(c)–	56	4.1	230	.50	115
314.107(e)–	25	3.92	98	.50	49
314.107(f)–	56	4.1	230	.50	115
314.110(c)	11	1.36	15	.50	7.5
314.420	524	1.98	1,038	61	63,318
Total					3,466,037

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8907 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0049]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Presubmission Conferences, New Animal Drug Applications and Supporting Regulations, and Food and Drug Administration Form 356V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 13, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0032. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Presubmission Conferences, New Animal Drug Applications and Supporting Regulations, and FDA Form 356V—(OMB Control Number 0910–0032)—Extension

Under section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(b)(3)), any person intending to file a new animal drug application (NADA) or supplemental NADA or a request for an investigational exemption under section 512(j) is entitled to one or more conferences with FDA to reach an agreement acceptable to FDA establishing a submission or investigational requirement. FDA and industry have found that these meetings have increased the efficiency of the drug development and drug review processes.

Section 514.5 (21 CFR 514.5) describes the procedures for requesting, conducting, and documenting presubmission conferences. Section 514.5(b) describes the information that must be included in a letter submitted by a potential applicant requesting a presubmission conference, including a proposed agenda and a list of expected participants. Section 514.5(d) describes the information that must be provided by the potential applicant to FDA at least 30 days prior to a presubmission conference. This information includes a detailed agenda, a copy of any materials to be presented at the conference, a list of proposed indications and, if available, a copy of the proposed labeling for the product under consideration, and a copy of any background material that provides scientific rationale to support the potential applicant's position on issues listed in the agenda for the conference. Section 514.5(f) discusses the content of the memorandum of conference that will be prepared by FDA and gives the potential applicant an opportunity to seek correction to or clarification of the memorandum.

Under section 512(b)(1) of the FD&C Act, any person may file an NADA seeking approval to legally market a new animal drug. Section 512(b)(1) of the FD&C Act sets forth the information required to be submitted in an NADA. FDA allows applicants to submit a complete NADA or to submit information in support of an NADA for phased review followed by submission of an Administrative NADA when FDA finds all the applicable technical sections are complete.

The regulations under 21 CFR 514.1 interpret section 512(b)(1) of the FD&C Act and further describe the information that must be submitted as part of an NADA and the manner and form in which the NADA must be assembled and submitted. The application must include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food-producing animals. Guidance #152 entitled "Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern" outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. FDA requests that an applicant accompany NADAs, supplemental NADAs, and requests for phased review of data to support NADAs, with the FDA Form 356V to ensure efficient and accurate processing of information to support new animal drug approval.

In the **Federal Register** of February 8, 2011 (76 FR 6798), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section/FDA Form No.	Number of respondents [4]	Number of responses per respondent	Total annual responses	Average burden per response (in Hours)	Total hours
514.5(b), (d) and (f)	154	.6	92.4	50	4,620
514.1 and 514.6	154	.1	15.4	212	3,265
514.4 [2]	154	0	0	0	0
514.8(b)	154	2.84	437.36	35	15,308
514.8(c)(1)	154	.1	15.4	71	1,093
514.8(c)(2) and (c)(3)	154	.7	107.8	20	2,156
514.11	154	.2	30.8	1	31

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section/FDA Form No.	Number of respondents [4]	Number of responses per respondent	Total annual responses	Average burden per response (in Hours)	Total hours
558.5(i)	154	.01	1.54	5	8
514.1(b)(8) and 514.8(c)(1) [3]	154	.21	32.34	90	2,911
FDA Form 356V	154	5.1	785.4	5	3,927
Total					33,319

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Substantial Evidence—Because 21 CFR 514.4 only defines substantial evidence, it should not be viewed as creating additional collection burden.
[3] NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach to assessing antimicrobial concerns as part of the overall preapproval safety evaluation.
[4] Based on the number of sponsors subject to animal drug user fees, FDA estimates that there was an average of 154 annual respondents during the 5 fiscal years, from October 1, 2005, through September 30, 2010, on which these estimates were made. We use this estimate consistently throughout the table and calculate the "annual frequency per respondent" by dividing the total annual responses by the number of respondents.

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8906 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–P–0485]

Determination That NOVANTRONE (Mitoxantrone Hydrochloride) Injection, Equivalent to 25 Milligrams Base/12.5 Milliliter and Equivalent to 30 Milligrams Base/15 Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that NOVANTRONE (mitoxantrone hydrochloride) Injection, equivalent to (EQ) 25 milligrams (mg) base/12.5 milliliters (mL) and EQ 30 mg base/15 mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Rachel Bressler, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6302, Silver Spring, MD 20993–0002, 301–796–4288.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, is the subject of NDA 19–297, held by EMD Serono, and initially approved on December 23, 1987. NOVANTRONE is indicated for reducing neurologic disability and/or the frequency of clinical relapses in patients with secondary (chronic) progressive, progressive relapsing, or worsening relapsing-remitting multiple sclerosis (*i.e.,* patients whose neurologic status is significantly abnormal between relapses). NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, is currently listed in the "Discontinued Drug Product List" section of the Orange Book. There are approved ANDAs for NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL; these ANDAs are listed in the Orange Book.

Apotex, Inc., submitted a citizen petition dated September 3, 2008 (Docket No. FDA–2008–P–0485), under 21 CFR 10.30, requesting that the Agency determine whether NOVANTRONE (mitoxantrone hydrochloride) Injection, 25 mg/12.5 mL and 30 mg/15 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that NOVANTRONE

(mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NOVANTRONE (mitoxantrone hydrochloride) Injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to NOVANTRONE Injection. Additional ANDAs for mitoxantrone hydrochloride injection, EQ 25 mg base/12.5 mL and EQ 30 mg base/15 mL, may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8819 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0164]

Draft Guidance for Industry on Safety Labeling Changes; Implementation of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act." The Food and Drug Administration Amendments Act of 2007 (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) authorizing FDA to require certain drug and biological product application holders to make safety related labeling changes based upon new safety information that becomes available after the drug or biological product is approved under the FD&C Act or the Public Health Service Act (the PHS Act). This draft guidance provides information on the implementation of the new provisions, including a description of the types of safety labeling changes that ordinarily might be required under the new legislation, how FDA plans to determine what constitutes new safety information, the procedures involved in requiring safety labeling changes, and enforcement of the requirements for safety labeling changes.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 12, 2011.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kristen Everett, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6228, Silver Spring, MD 20993–0002, 301–796–5400, or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act." In the past, FDA has requested that holders of applications for approved products make labeling changes related to safety after approval to address serious risks. FDA learned of the potential for such serious risks from a variety of sources. In most cases, application holders responded to these requests by negotiating appropriate language with FDA staff to address the concerns, and then submitting a supplement or amended supplement to obtain approval of the change. Negotiations were often protracted, and FDA had few tools available at its disposal to end negotiations and require the changes. Congress recognized the limitations of FDA's authority in this area and, in FDAAA, gave FDA new authority to require safety labeling changes in certain circumstances.

Title IX, section 901 of FDAAA (Pub. L. 110–85) amended the FD&C Act by adding new section 505(o)(4) (21 U.S.C. 355(o)(4)). Section 505(o)(4) authorizes FDA to require, and if necessary, order labeling changes if FDA becomes aware of new safety information that FDA believes should be included in the labeling of certain prescription drug and biological products approved under section 505 of the FD&C Act or section 351 of the PHS Act (42 U.S.C. 262). Specifically, section 505(o)(4) of the FD&C Act applies to prescription drug products with an approved new drug application (NDA) under section 505(b) of the FD&C Act, biological products with an approved biologics license application (BLA) under section 351 of the PHS Act, or prescription drug products with an approved abbreviated new drug application (ANDA) under section 505(j) of the FD&C Act if the reference listed drug (RLD) with an approved NDA is not currently marketed. FDAAA imposes timeframes for application holders to submit and FDA staff to review such changes, and gives FDA new enforcement tools to bring about timely and appropriate labeling changes. This draft guidance provides information on the implementation of the new provisions, including a description of the types of safety labeling changes that ordinarily

might be required under the new legislation, how FDA plans to determine what constitutes new safety information, the procedures involved in requiring safety labeling changes, and enforcement of the requirements for safety labeling changes.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the implementation of section 901 of FDAAA on safety labeling changes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collections of information associated with this draft guidance that were not previously approved by OMB, described below, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This draft guidance provides information on the implementation of section 901 of FDAAA, which authorizes FDA to require certain drug and biological product application holders to make safety related labeling changes based upon new safety information that becomes available after the drug or biological product is approved under the FD&C Act or the PHS Act. FDA plans to request safety labeling changes by sending a notification letter to the application holder. Under section 505(o)(4)(B), the application holder must respond to FDA's notification by submitting a labeling supplement or notifying FDA that the applicant does not believe the labeling change is warranted and submitting a statement detailing the reasons why the application holder does not believe a change is warranted (a rebuttal statement).

The submission of rebuttal statements may result in the collection of information that is not already approved by OMB. Based on FDA's experience thus far with safety labeling changes requirements under section 505(o)(4), FDA estimates that approximately six application holders will elect to submit approximately one rebuttal statement each year and that each rebuttal statement will take approximately 6 hours to prepare.

In addition, in the draft guidance, the agency states that new labeling prepared in response to a safety labeling change notification should be available on the application holder's Web site within 10 calendar days of approval, which may result in the collection of information that is not already approved by OMB. FDA estimates that approximately 197 application holders will post new labeling one time each year in response to a safety labeling change notification and that the posting of the labeling will take approximately 4 hours to prepare.

FDA estimates the burden of the collections of information that have not already been approved by OMB, is as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total responses	Hours per response	Total hours
Rebuttal statement	6	1	6	6	36
Total					36

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

TABLE 2—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]

Type of submission	Number of respondents	Annual frequency per disclosure	Total annual disclosures	Hours per disclosure	Total hours
Post approved labeling on application holder's Web site	197	1	197	4	788

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

This draft guidance also refers to previously approved collections of information. Specifically, the draft guidance describes: Labeling supplements for NDAs, ANDAs, and BLAs submitted under 21 CFR 314.70,

314.71, 314.97 and 601.12; and the content and format of prescription drug labeling submitted under 21 CFR 201.56 and 201.57. These collections of information are subject to review by OMB under the PRA act and are approved under OMB control numbers 0910–0001, 0910–0338, and 0910–0572. Section V of the draft guidance refers to the guidance entitled "Formal Dispute Resolution: Appeals Above the Division Level," which describes collections of information approved under OMB control number 0910–0430.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8895 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1998–D–0281]

Guidance for Industry and Food and Drug Administration Staff; 30-Day Notices, 135-Day Premarket Approval Supplements and 75-Day Humanitarian Device Exemption Supplements for Manufacturing Method or Process Changes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "30-Day Notices, 135-Day Premarket Approval (PMA) Supplements and 75-Day Humanitarian Device Exemption (HDE) Supplements for Manufacturing Method or Process Changes." This document provides guidance on the type of changes to an approved application that FDA believes may qualify for submission as 30-day notices, the type of information to submit in a 30-day notice, and the user fees associated with these submissions. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices (GGP).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For devices regulated by CDRH: Anastacia Bilek, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3656, Silver Spring, MD 20993–0002, 301–796–5588.

For devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "30-Day Notices, 135-Day Premarket Approval (PMA) Supplements and 75-Day Humanitarian Device Exemption (HDE) Supplements for Manufacturing Method or Process Changes." This guidance is being issued consistent with FDA's GGP regulation (§ 10.115 (21 CFR 10.115). This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because statutory provisions regarding medical device user fees under the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85) are in effect and being implemented, and guidance is needed to help effect such implementation. Although this guidance is immediately in effect, it remains subject to comment in accordance with the Agency's GGP regulation.

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. *et seq.*) to authorize FDA to collect user fees for the review of certain premarket submissions (See section 708 of the FD&C Act (21 U.S.C. 379j).) FDAAA further amended the FD&C Act to extend FDA's authority to collect medical device user fees through September 30, 2012, and added 30-day notices to the types of premarket submissions subject to user fees (21 U.S.C. 379j(a)(2)(A)(vi)). For additional information on the MDUFMA, please see *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/default.htm.*

This guidance supersedes the previous guidance document entitled "30-Day Notices and 135-Day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH," that published in the **Federal Register** of February 25, 1998 (63 FR 9570). This guidance describes the user fees authorized, updates the previous guidance to clarify the process for submitting a 30-day notice, and provides additional information on the types of changes that may be submitted. The previous guidance did not include information on HDEs even though certain modifications to a manufacturing procedure or method of manufacture for HDEs are subject to the 30-day notice provisions. The current guidance includes this information.

The guidance represents the Agency's current thinking on 30-day notices, 135-day PMA supplements and 75-Day HDE supplements for manufacturing method or process changes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3520). The collections of information 21 CFR part 814, subparts B and E, have been approved under OMB control number 0910–0231; the collections of information 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the collections of information 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in FDA form 3601 have been approved under OMB control number 0910–0511; and the collections of information in FDA form 3602a have been approved under OMB control number 0910–0508.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*. Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8886 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0044]

Guidance for Industry on Influenza: Developing Drugs for Treatment and/or Prophylaxis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Influenza: Developing Drugs for Treatment and/or Prophylaxis." This guidance is intended to assist sponsors in the clinical development of drugs and therapeutic biological products for the treatment and/or prophylaxis of illness caused by influenza viruses A and B, including both seasonal and pandemic varieties. This guidance finalizes the draft guidance issued February 20, 2009.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Influenza: Development of Drugs for Treatment and/or Prophylaxis." Because of the public health implications of both epidemic and pandemic influenza, the variable nature of the disease, the limited therapeutic options, and challenges in studying new options, FDA is issuing guidance to assist sponsors in all phases of influenza drug development.

This guidance addresses nonclinical development, early phases of clinical development, phase 3 protocol designs and endpoints for the treatment of both uncomplicated and serious influenza, and protocol designs for prevention of symptomatic influenza. Other issues that are addressed in this guidance include the role of animal data in an influenza drug development program, and considerations relating to the potential for emergency access to influenza drugs, including advance development of protocols for further exploration and verification of drug effects under epidemic and pandemic conditions.

A draft notice of availability of this guidance was published for comment in the **Federal Register** of February 20, 2009 (74 FR 7908). Comments we received on the draft guidance have been considered and the guidance has been revised as follows: (1) Clarification on the size of a safety database needed to support filing of a new drug application for the treatment of serious influenza; (2) elaboration on why virologic endpoints are not currently acceptable primary efficacy endpoints in phase 3 studies; (3) a recommendation for the inclusion of sensitive and specific assays (*e.g.,* real-time polymerase chain reaction assay) for laboratory confirmation of influenza infection to assist in defining the infected population for analyses in influenza treatment trials; and (4) additional statements regarding proposals for potential emergency use authorizations of antiviral drugs for influenza.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on developing drugs for treatment and/or prophylaxis of influenza illness. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8817 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Preparation for International Conference on Harmonization Steering Committee and Expert Working Group Meetings in Cincinnati, OH; Regional Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "Preparation for ICH Steering Committee and Expert Working Group Meetings in Cincinnati, Ohio" to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Cincinnati, OH. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Cincinnati, OH, scheduled on June 11 through 17, 2011, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The public meeting will be held on May 19, 2011, from 2 p.m. to 4 p.m.

Location: The public meeting will be held at the Washington Theater room at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: All participants must register with Kimberly Franklin, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, e-mail: *Kimberly.Franklin@fda.hhs.gov,* or FAX: 301–595–7937.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentations to the contact person (see *Contact Person*) by May 16, 2011.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Public oral presentations will be scheduled between approximately 3:30 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person (see *Contact Person*) by May 16, 2011, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, telephone number, fax, and email of proposed participants, and an indication of the approximate time requested to make their presentation.

If you need special accommodations due to a disability, please contact Kimberly Franklin (see *Contact Person*) at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information, 12420 Parklawn Dr., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory Agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor, and Welfare; the Japanese Pharmaceutical Manufactures Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

The agenda for the public meeting will be made available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm248489.htm.*

Dated: April 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8816 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

International Consortium of Orthopedic Registries; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "International Consortium of Orthopedic Registries (ICOR)." The

purpose of the public workshop is to facilitate discussion among FDA and worldwide orthopedic registries that have orthopedic implant information and create a research network to advance the methodology and conduct of research related to orthopedic device performance.

Date and Time: The public workshop will be held on May 9, 2011, from 8 a.m. to 5:30 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503 (the Great Room), Silver Spring, MD 20993. Participants are encouraged to arrive early to ensure time for parking and security screening before the meeting.

Contacts:

For information regarding the public workshop and registration: Betty Jo Alfstad, Surgical Outcomes and Analysis, Kaiser Permanente, 3033 Bunker Hill Street, B30, San Diego, CA 92109, 858–581–8272, e-mail: *Betty.Jo.Alfstad@kp.org;*

For information regarding this notice: Tamia Woodruff, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 307–796–6091, e-mail: *Tamia.Woodruff@fda.hhs.gov.*

Registration: There is no fee to attend the public workshop, but attendees must register in advance. Registration will be on a first-come, first-served basis. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. Registration ends April 25, 2011. Onsite registration is not available. If registration reaches maximum capacity prior to April 25, 2011, FDA will post a notice closing workshop registration on FDA's Web site at *http://www.fda.gov/cdrh/meetings.html.*

To register for the public workshop, mail or e-mail your name, title, organization affiliation, address, phone number, and email address to Betty Jo Alfstad (see *Contacts*). Registrants will receive e-mail confirmation upon acceptance for their participation in the public workshop. If you need special accommodations due to a disability, please contact Tamia Woodruff (see *Contacts*) at least 7 days in advance of the public workshop.

SUPPLEMENTARY INFORMATION:

I. Why are we holding this public workshop?

The purpose of the public workshop is to facilitate discussion among FDA and international orthopedic registries and develop a research consortium (ICOR) that will advance the methodology and conduct of studies for orthopedic medical devices. We are reaching out to registries that have relevant data and are interested in collaboration to establish a network that will work with FDA to determine the evidence gaps and questions, datasets and approaches for conducting robust analytic studies and improve our understanding of the performance of orthopedic devices.

II. Who is the target audience for this public workshop? Who should attend this public workshop?

This workshop is open to all interested parties. The target audience is comprised of data holders, researchers, and industry interested in advancing the infrastructure and methods for studying orthopedic medical devices.

III. What are the topics we intend to address at the public workshop?

We intend to discuss a large number of issues at the workshop, including, but not limited to the following:

- Regulatory science, clinical community, payers' and patients' needs that led to creation of ICOR.
- New methods for distributed network based collaborative studies.
- The opportunities for medical device outcomes research.

IV. Where can I find out more about this public workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/cdrh/meetings.html.*

Dated: April 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8894 Filed 4–12–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel and Spa, 1600 King Street, Washington, DC 22314.

Contact Person: William C. Benzing, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8965 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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 materials,

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 Advisory Neurological Disorders and Stroke Council.

Date: May 26–27, 2011.

Open: May 26, 2011, 10:45 a.m. to 4:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research, NINDS; Other Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 26, 2011, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 27, 2011, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http:///www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8935 Filed 4–12–11; 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: Cardiac Electrophysiology.

Date: May 19, 2011.

Time: 2:30 p.m. to 5 p.m.

*Agenda:*To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PA–11–011—Getting from Genes to Function in Lung Disease.

Date: May 25–26, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: May 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Rolf Jakobi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Investigations on Primary Immunodeficiency Diseases.

Date: May 26, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@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: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8933 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: May 31–June 2, 2011.

Open: May 31, 2011, 5 p.m. to 5:30 p.m.
Agenda: To review procedures and discuss policy.
Place: Seaport Boston Hotel, 200 Seaport Boulevard, Boston, MA 02210.
Closed: May 31, 2011, 5:30 p.m. to 9:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Seaport Boston Hotel, 200 Seaport Boulevard, Boston, MA 02210.
Closed: June 1, 2011, 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Seaport Boston Hotel, 200 Seaport Boulevard, Boston, MA 02210.
Closed: June 2, 2011, 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Seaport Boston Hotel, 200 Seaport Boulevard, Boston, MA 02210.
Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8932 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 Dental and Craniofacial Research Special Emphasis Panel; Review RFA–DE–12–001, NIDCR Behavioral or Social Intervention Planning and Pilot Data Grant Applications.
Date: May 18, 2011.
Time: 8 a.m. to 6 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: Jayalakshmi Raman, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, One Democracy Plaza, Room 670, Bethesda, MD 20892–4878, 301–594–2904, *ramanj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8931 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group; DCLG.
Date: May 18–20, 2011.
Time: May 18, 2011, 12 p.m. to 5 p.m.
Agenda: Welcome, Panel Discussion on Public Private Partnership Models, Clinical Research Organizations and How They Promote Public Private Partnerships, Board Dialogue.
Place: Rizzo Conference Center, 150 DuBose House Lane, Chapel Hill, NC 27517.
Time: May 19, 2011, 8 a.m. to 5 p.m.
Agenda: Board Dialogue, Nonprofit Conveners Driving Implementation of Research Outcomes, Barriers to Implementation of Research Outcomes, Presentations Highlighting Local Academic Research in Cancer.
Place: Rizzo Conference Center, 150 DuBose House Lane, Chapel Hill, NC 27517.
Time: May 20, 2011, 8 a.m. to 12 p.m.
Agenda: NCI Leadership Update, Board Dialogue.
Place: Rizzo Conference Center, 150 DuBose House Lane, Chapel Hill, NC 27517.
Contact Person: Shannon K. Bell, MSW, Director, Office of Advocacy Relations, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 10A30D, Bethesda, MD 20892, 301–451–3393.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8929 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group; Subcommittee G—Education.
Date: May 24, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications,
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeannette F Korczak, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8928 Filed 4–12–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Research Resources Site Visit.

Date: May 22–24, 2011.

Time: 7 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8927 Filed 4–12–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by Eunice Kennedy Shriver National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 3, 2011.

Open: 8 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Closed: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Room 2A46, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, Acting Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A46, Bethesda, MD 20892, 301–594–5984, *stratakc@nichd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page *http://www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8986 Filed 4–12–11; 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; Analysis of Human Biospecimens for Environmental Chemicals for the Division of Epidemiology, Statistics and Prevention Research.

Date: April 18, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Sathasiva B. Kandasamy, 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, 301–435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8985 Filed 4–12–11; 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 contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, 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; Biomedical Analysis of Human Biospecimens for the Division of Epidemiology, Statistics and Prevention Research (DESPR)

Date: May 2, 2011.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, 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 20892–9304, 301–435–6680, *skandasa@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: April 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8941 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Special Emphasis Panel; Parkinson's Disease Biomarker.

Date: April 25, 2011.

Time: 12 p.m. to 3 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: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301–435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8988 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 materials, 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 Neurological Disorders and Stroke Initial Review Group; NST–1 Subcommittee.

Date: May 23–24, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; NST–2 Subcommittee.

Date: June 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: JoAnn McConnell, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–5324, *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8994 Filed 4–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1965–DR; Docket ID FEMA–2011–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1965–DR), dated March 31, 2011, and related determinations.

DATES: *Effective Date:* March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 31, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, tornadoes, and flooding during the period of February 28 to March 1, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Montague Winfield, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Franklin, Fentress, Grainger, Hamilton, Houston, Humphreys, Jackson, Jefferson, Moore, Morgan, Pickett, Scott, and Union Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–8859 Filed 4–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee meeting.

SUMMARY: On Tuesday, March 29, 2011, the Federal Emergency Management Agency (FEMA) announced in the **Federal Register** at 76 FR 17425 that the National Fire Academy Board of Visitors would meet on April 6 and 7, 2011, in Emmitsburg, Maryland. This notice supplements that original meeting notice.

DATES: The National Fire Academy Board of Visitors meeting was held on Wednesday, April 6, 2011, from 8:30 a.m. to 5 p.m., EST; and Thursday, April 7, 2011, 8:30 a.m. to 1 p.m., EST.

ADDRESSES: The meeting was held at the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written materials and comments for the meeting record should be submitted by April 28, 2011. Comments must be identified by FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *ruth.macphail@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The purpose of the Board of Visitors (Board) for the National Fire Academy (Academy) is to review annually the programs of the Academy and advise the Administrator, Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, regarding the operation of the Academy and any improvements therein that the Board deems appropriate.

The Board met for the purpose of examining Academy programs to determine whether these programs further the basic missions of the Academy and to make comments and recommendations regarding the operations of the Academy. The Board also met to discuss curriculum updates, personnel changes, facility construction, outreach to women and minority applicants, and professional development and other programs for

State and metropolitan fire service training agencies. The meeting was open to the public.

The Federal Advisory Committee Act requires that notices of meetings of advisory committees be announced in the **Federal Register** 15 days prior to the meeting date. A notice of the meeting of the Board was published in the **Federal Register** on March 29, 8 days prior to the meeting, due to administrative error. Although the meeting notice was published in the **Federal Register** late, the Academy sent special e-mail notices to 30,000 citizens who had expressed interest in learning about Academy activities and meetings, and notice of the meeting was posted on the United States Fire Administrator's Web site at *http://www.usfa.dhs.gov.*

Dated: April 4, 2011.

Glenn A. Gaines,

Deputy Fire Administrator, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2011–8858 Filed 4–12–11; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2011, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2011–5, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2011, and ending on June 30, 2011. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning July 1, 2011, and ending September 30, 2011.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning Date	Ending Date	Overpayments (percent)	Under-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	

Beginning Date	Ending Date	Overpayments (percent)	Under-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (percent)
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	063011	4	4	3

Dated: April 8, 2011.

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–8950 Filed 4–12–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–10]

Notice of Proposed Information Collection for Public Comment; Public Housing Agency (PHA) 5-Year and Annual Plan

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400, (this is not a toll-free number) or e-mail Ms. Pollard at *Collette.Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 490 L'Enfant Plaza, Room 2206, Washington, DC 20024; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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: Public Housing Agency (PHA) 5-Year and Annual Plan.

OMB Control Number, if applicable: 2577–0226.

Description of the Need for the Information and Proposed Use: The PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals. The PHA Plan informs HUD, residents, and the public of the PHA's mission for serving the needs of low, very low-income, and extremely low-income families and its strategy for addressing those needs. This data allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs. The PHA Plan is being revised to clarify and provide additional guidance on the submission requirements for qualified and non-qualified PHAs.

Agency Form Number, if applicable: HUD–50075; HUD–50075.1, HUD–

50075.2, HUD–50077, HUD–50077–CR, HUD–50077–SL.

Members of the Affected Public: Local, Regional and State Body Corporate Politic Public Housing Agencies (PHAs) Governments..

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 45,612; estimated number of respondents is 3,969; the frequency of response for non-qualified PHAs is annually and once every 5 fiscal years for qualified PHAs. All PHAs may submit updated PHA Plans when amending or modifying any PHA policy, rule, regulation or other aspect of the plan.

Status of the Proposed Information Collection: This is a revision of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 5, 2011.

Merrie Nichol-Dixon,

Deputy Director for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2011–8778 Filed 4–12–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5514–N–01]

Fellowship Placement Pilot Program Requests for Expressions of Interest To Administer Pilot

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's proposal to conduct a Fellowship Placement Pilot (fellowship program). The fellowship program is designed to assist local governments rebuild their capacity by training and placing highly motivated early to midcareer professionals into two-year fellowships to work in a mayor's office or other offices of local government agencies.

HUD intends to conduct the fellowship program in approximately six pilot cities. In choosing these pilot cities, HUD has conducted an extensive evaluation process and is in the final stages of selecting the pilot cities.

Through a national competitive process, up to 30 fellows will be recruited for the initial class, where each pilot city may receive up to five fellows. Fellows will receive stipends and will be mentored by staff located in each pilot city.

To administer the fellowship program, HUD will select an eligible third party as defined in section II.B. *Definitions* of this notice. HUD solicits expressions of interest by eligible third parties to administer the fellowship program. Qualified eligible third parties that have expressed interest to HUD in administering the fellowship program will be invited to submit full applications for review and grant selection.

While there is no match requirement for the fellowship program, HUD recognizes that the scope of work required of the program may exceed the funds that are available for this grant. Therefore, HUD expects that the selected third party will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (Please see section II.C.1 *Leveraging* for more information.)

Funding for the fellowship program was made available to HUD through a private donation, which HUD is statutorily authorized to accept.

DATES: *Expressions of Interest Due Date:* May 13, 2011. HUD will review the Expressions of Interest received from third parties. Only third parties determined eligible to apply will be notified by HUD no later than 30 days after Due Date to submit full applications.

ADDRESSES: *Interested Third Parties.* Third parties interested in participating in the fellowship program are directed to submit their Expressions of Interest to *FellowshpPlacementProgram@hud.gov* by the Due Date.

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–708–3815 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, senior leadership from the White House, HUD, and other federal agencies have assessed ways to enhance technical assistance to help some of the nation's most economically distressed cities so that they may begin to stabilize and rebuild their local economies.

These cities, formerly key economic engines of regional and national prosperity have in the past several decades, undergone high poverty and unemployment rates, severe residential and commercial vacancies, long-term population loss, and have struggled to return to a place of economic productivity. The long term economic decline of these cities have constrained local resources, and precluded them from attracting, hiring and maintaining sufficient staff to support key operations and execute revitalization strategies. Moreover, rising government costs, declining revenue streams, and the requirement that state and local governments maintain a balanced budget continue to further these economic challenges.

However, despite these significant challenges, these cities possess tremendous physical, commercial, and public assets that can be used to revive their local and regional economies. In an effort to ensure the economic health and well being of regional and national economies, these cities must be given the best opportunity possible to regain strength through leveraging their key assets and extensively partner with public and private sectors. In addition, the revitalization of these cities can be assisted by providing them with additional highly skilled staff with wide-ranging technical expertise in fields that include urban planning, workforce training, economic development, and human capital strategies.

The fellowship program is one outcome of these Federal level discussions in 2010, and one component of a broader and new approach to making the federal investment model more flexible, targeted, tailored, and holistic in building local capacity in cities and regions facing long-term challenges. With this new method, these cities can more effectively build partnerships with businesses, non-profits, and other key economic players that will help attract critical private investment to create jobs, promote economic growth, and enhance community prosperity. As a result, this targeted assistance will help put these places on a path towards creating a customized and specific plan for long-term economic revitalization.

II. Fellowship Placement Pilot Program

A. Fellowship Placement Pilot Program Overview

As described in the *Summary,* the fellowship program will be a competitive program that provides funding for early to mid-career

professionals to work for two year terms in local government positions to supplement existing local capacity. HUD envisions that through a national competitive process, up to 30 fellows who are strongly committed to public service, will be selected for the initial fellowship class. Fellows will be deployed to pilot cities where they will support and assist local governments in their economic revitalization efforts. Fellows will receive stipends and will be mentored by staff located in each pilot city. The objectives of fellows assigned to selected pilot cities will be to:

1. Take on high-level responsibilities and be immersed in the core operations of the host city;

2. Engage in peer-to-peer learning opportunities and become active leaders in their host city; and

3. Be intensely engaged and committed to the redevelopment of the city so that they remain working in the city after the end of the program.

HUD intends to conduct the fellowship program in approximately six pilot cities. Each pilot city may receive up to five fellows. As noted earlier in the *Summary,* HUD is in the final stages of selecting the pilot cities.

When HUD selects the pilot cities, HUD will conduct a comprehensive city assessment for each pilot city to identify their key challenges and areas of capacity need. The city assessments also will provide useful information to help determine how fellows can be used to support each pilot city. HUD intends to complete the city assessments before the fellowship administrator is selected.

Funding for the fellowship program is provided through a donation of $2.5 million by a private philanthropic organization, which HUD is authorized to accept under section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)(1)). The donation was specifically provided to HUD to develop, manage, and implement a national fellowship program to enhance the capacity of some of the nation's most economically distressed cities. In addition, 42 U.S.C. 3532(b) authorizes the Secretary of HUD to "exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development" as well as to "provide technical assistance and information * * * to aid state, county, town, village, or other local governments in developing solutions to community and metropolitan development problems."

B. Fellowship Placement Pilot Program Administrator

HUD is not seeking applications through this notice but is seeking expressions of interest from eligible third parties (Administrator) to administer the fellowship program. The selected Administrator will be responsible for two major activities of the fellowship program:

1. Manage and administer the fellowship program at the national and local level (Activity 1); and

2. Develop training curriculum and train fellows for the program (Activity 2).

To be eligible for selection, the Administrator must be able to carry out *both* activities.

The selected Administrator will be a single third party *OR* a partnership of third parties, as the term "third party" is defined below, along with other key definitions.

Definitions: The following terms shall have the meaning indicated below:

Administrator: The term "administrator" means a third party or partnership of third parties that will be responsible for all tasks associated with activities 1 and 2 described in this Expression of Interest.

Third-party: The term "third party" means an educational institution, private and for-profit entity, or private or public nonprofit with a 501(c)(3) status.

Partnership: The term "partnership" means any combination or grouping of two or more third-parties as previously defined. Examples of possible partnerships among third parties may include, but is not limited to, a partnership between:

- A national or regional leadership institute and local universities or other local organization with relevant experience; or
- A volunteer or community driven organization and college institution.

Further, to differentiate among the tasks associated with Activity 1 and Activity 2, HUD will use the following terms:

Activity 1

Local organization: The term "local organization" will refer to those third parties that will be tasked to work in each of the pilot cities. In addition, HUD will expand this definition of "local organization" to include an individual(s) who is a qualified independent consultant or professional expert that can effectively manage the work at the local level.

Activity 2

Training Organization: The term "training organization" will refer to the third parties that will assume all tasks associated with training as described in section II.C.2 of this Expression of Interest.

Period of expenditure of fellowship program funds: The $2.5 million to be made available for the fellowship program is to be used by the Administrator over the course of 30 months from the date that funding is made available. HUD Headquarters will monitor the Administrator to ensure that the funds are efficiently utilized over the 30 month period.

Cooperative agreement: Upon selection of an Administrator, HUD intends to execute a cooperative agreement with the Administrator that delineates the objectives, roles and responsibilities for HUD and the Administrator. HUD recognizes that the success of the fellowship program will require flexibility and adaptability in design and implementation. Therefore, the cooperative agreement will allow HUD to work closely with the Administrator to help fine tune activities as needed to ensure that activities are implemented in a manner that is consistent with the objectives of the fellowship program. HUD anticipates that it will have significant involvement in all aspects of the fellowship program's planning, delivery, and follow-up.

C. Primary Tasks of the Administrator

HUD's proposal for the fellowship program involves two major activities for the Administrator to carry out, as noted above. The following provides more details on these activities.

1. Activity 1: Manage and Implement the Fellowship Program at the National and Local Level

Coordination with selected pilot cities: HUD recognizes that the fellowship program will require a local presence in each of the pilot cities. Therefore, the Administrator will be required to identify, coordinate and collaborate with a local organization in each of the pilot cities. (**Note:** Because HUD has not yet finalized its selection of the pilot cities, eligible third parties that have submitted their *Expressions of Interest* to HUD, and are determined eligible to apply for the fellowship program will be required to outline a detailed plan that describes how they will identify, select and coordinate with local organizations in their applications.)

HUD expects the relationship between the Administrator and local organizations to be sufficiently flexible to ensure that the program functions smoothly and successfully. The

Administrator will be responsible for the following six tasks:

- Managing the overall operations of the fellowship program which includes paying fellow stipends, recruiting and selecting fellows, and coordinating with local organizations in each pilot city.
- Working with the city to ensure that fellows are well integrated with their pilot city and working on high-level, strategic projects;
- Helping to coordinate site visits with the training organization;
- Identifying additional training and mentoring opportunities fellows may require as they progress through the program; and
- Tracking and monitoring data to be used for evaluating the success of fellows and the fellowship program.
- Securing additional support from philanthropic organizations to meet the objectives and scope of work in the fellowship program.

Note: Interested eligible third parties that are determined eligible to apply for the fellowship program will be asked to specify who (the Administrator or local organization) would be responsible for carrying out the five tasks described above.

Payment of fellows: The Administrator will be responsible for paying fellows in the program. HUD plans to set-aside a portion of the $2.5 million to pay fellow stipends. HUD anticipates that fellow stipends will be $60,000 per year. In the best case scenario, the cost of the stipend is shared between the pilot city and the program. When the pilot city is selected, HUD will work with each pilot city in determining the cost share of the stipend.

Recruitment and selection of fellows: The Administrator will be responsible for recruiting and selecting qualified fellows for the program. No HUD employees are eligible to participate in the fellowship program. The Administrator will be primarily responsible for marketing and advertising the program in places such as graduate programs, career listservs and public sector networks. HUD may also assist in advertising the program to increase the number of applicants.

HUD recognizes that selecting the most qualified fellows is a critical element to ensuring the success of the fellowship program. As a result, the Administrator to be selected must have significant expertise in similar selection and recruitment experience, preferably for public service employment. HUD will work with Administrator to ensure that the types of fellows selected meet the needs and objectives of the fellowship program. HUD also has developed general criteria for the types of qualifications anticipated for participation in the program. Please see the Appendix B for the list of fellow qualifications.

HUD expects the Administrator to work closely with pilot cities to ensure that the skill sets of fellows recruited reflects the needs of the pilot cities. Before the recruitment process begins, HUD will connect the Administrator to the relevant pilot city officials to facilitate such coordination.

Coordination with local organizations: The Administrator will coordinate their activities with local organizations to ensure that the objectives of the fellowship program are being met. This may include activities such as monitoring the work of the fellows and working with the pilot cities to identify potential projects. HUD does not want to be rigid in defining these roles and responsibilities. Rather, HUD expects the relationship between the Administrator and the local organizations to be flexible enough to ensure that the program operates smoothly and successfully.

Mentorship of fellows: HUD recognizes that mentors will be critical to the success and retention of fellows in the program. HUD does not want to be rigid in defining the roles and responsibility of mentorship. Rather, HUD expects the selected Administrator to be adaptive, responsive and flexible enough to meet the needs of fellows. This would include ensuring that fellows work on challenging and strategic projects and are well-integrated and connected to their pilot city.

Due to the complex nature of the work required of fellows to meet the intricate challenges of pilot cities, HUD anticipates that the roles and responsibilities of fellows will likely change as the program progresses. In addition, HUD does not have specific projects for fellows in mind. However, HUD, at minimum, expects that the work of fellows must be high-level, strategic projects that will help advance the economic goals of a pilot city. As described in section II.A *Fellowship Placement Pilot Program Overview,* the types of projects that fellows are expected to work on will be informed by a city assessment process of each pilot city that HUD will be undertaking separately. Please also review section D. *Pilot Cities, City Assessments* for more information on the city assessment process.

Coordinating training activities: HUD expects the selected Administrator will work to identify opportunities for additional training which may include, but are not limited to conferences, workshops, or meetings. In addition, the Administrator will help coordinate site visits throughout the span of the fellowship program.

Evaluation: HUD expects that the selected Administrator to collect data to help HUD evaluate the success of fellows and the program. HUD will provide the Administrator with a basic template to collect qualitative and quantitative information. In addition, HUD welcomes proposals from the Administrator on additional metrics for data collection.

Leveraging: As described in the *Summary,* HUD will not have a match requirement for the fellowship program. However, HUD recognizes that the scope of work required of the program may exceed the funds that are available for this grant. Therefore, HUD expects that the selected Administrator will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (**Note:** Eligible third parties that have submitted their *Expressions of Interest* to HUD, and are determined eligible to apply for the fellowship program will be required to explain how they plan to identify and secure additional financial support to meet the full scale of the fellowship program in their applications.)

2. Activity 2: Develop Training Curriculum and Train Fellows for the Fellowship Program

HUD expects that fellows selected will likely enter the program with an array of skills and expertise, but notwithstanding skills and expertise, fellows will be expected to undergo orientation and training. The selected Administrator will either serve as the training organization or identify a training organization to assist with training selected fellows. In this discussion of Activity 2, training organization refers to the entity (either the Administrator or another third party) that will be responsible and conduct orientation and training. For this activity, the training organization would be required to complete the following tasks:

a. Develop orientation materials for fellows entering the program;

b. Develop or apply existing training curriculum that will equip fellows with the fundamental knowledge, tools and skills they would need to be successful in the program.

c. Identify the locations of where fellows are to be trained and train fellows; and

d. Coordinate with the national and local intermediaries on additional training fellows may need as they

progress through the program, as well as help to coordinate site visits.

Orientation: The training organization will develop the materials and agenda to help orient the new class of fellows. The training organization will administer the orientation training and coordinate activities, guest speakers and attendees with HUD.

Training: The training organization will be responsible for all aspects of training, which includes training fellows and developing the training curriculum for fellows. HUD expects that training courses should be practical in nature, and focus on leadership development and team building. Areas of focus will be wide-ranging in scope and may include, but are not limited to project management; bureaucratic navigation; finance and acquisition; data and monitoring; changing market conditions; urban planning and redevelopment; human and social capital development; and local government finance and budgeting.

While HUD recognizes that the training of fellows will largely be "on-the-job" training, HUD expects that the training courses developed should make every effort to draw on real world experiences in the policies and practices of local government.

Development of local training opportunities: The training organization will be responsible for developing or identifying additional local training opportunities for fellows. Responsibilities for the training organization may include, but are not limited to, coordinating site visits; developing workshops on a specific topic; and identifying and bringing in expert consultants or speakers to educate fellows. While HUD will not require a minimum number of training opportunities or site visits, HUD expects at least one site visit to be in a pilot city. The purpose of site visits is to help increase the knowledge and expertise of fellows in the program.

Leveraging: HUD recognizes that the scope of work required of the fellowship program will exceed the funds that are available for this grant. Therefore, HUD expects that the training organization will secure additional funding support from other philanthropic organizations to fulfill the scope of work for the fellowship program. (**Note:** Eligible third parties that have submitted their *Expressions of Interest* to HUD, and are determined eligible to apply for the fellowship program will be required to explain how they plan to identify and secure additional financial support to meet the full scale of the fellowship program in their applications.)

3. Reporting Requirements

HUD will require the selected Administrator to report to the Government Technical Representative (GTR) who will be responsible for managing the fellowship program grant at HUD no less often than quarterly, unless otherwise specified in the cooperative agreement. As part of this required report to HUD, the selected Administrator will update the GTR with information on actual outputs and data related to outcomes achieved, and a narrative explanation of any disparity between projected and actual results. HUD will also require the selected Administrator to provide HUD with a final narrative report no more than three months from the end of the grant period.

Indirect costs: Indirect costs, if applicable, are allowable based on an established approved indirect cost rate. Applicants should have on file, and submit to HUD as part of their grant application, a copy of their approved indirect cost rate agreement if they have one. Applicants that are selected for funding but do not have an approved indirect cost rate agreement established by the cognizant federal agency, and who want to charge indirect costs to the grant, will be required to establish a rate. In such cases, HUD will issue an award with a provisional rate and assist applicants with the process of establishing a final rate.

D. Selected Pilot Cities

As previously noted, HUD is in the final stages of selecting the pilot cities. HUD anticipates that it will select and announce the pilot cities before the selection of an Administrator.

City assessments: When HUD selects the pilot cities, HUD will conduct a comprehensive city assessment. HUD intends to complete the city assessments before an Administrator is selected. The purpose of the city assessment is to identify the key challenges and areas of need for each pilot city. To help conduct these assessments, HUD will work closely with city mayors and their staff to examine areas such as staffing resources; internal decision making processes; fiscal and budget capacity; and economic development and housing projects.

HUD expects that the selected Administrator, in close collaboration with each pilot city, will review the information from the city assessment to identify the types of work and projects for fellows. (HUD will provide the selected Administrator with the city assessments and connect them with each pilot city.) This will allow the selected Administrator to recruit and match fellows according to the needs of each pilot city.

HUD's Coordination Role. When an Administrator is selected, HUD will take the lead role in coordinating all key aspects of the program between the Administrator and the pilot cities to ensure the successful implementation of program objectives. HUD's role in coordination would include, but is not limited to:

- Facilitating meetings between the third party and the pilot cities;
- Negotiating, where appropriate, fellowship work responsibilities;
- Hosting site visits in pilot city locations.

A. Solicitation of Expressions of Interests

Third parties interested in being selected as the Administrator for the fellowship program are invited to advise of their interest to HUD by must emailing such Expression of Interest to *FellowshpPlacementProgram@hud.gov* by the deadline set forth in the **DATES** section of this notice. HUD welcomes parties expressing an interest (but imposes no requirement to do so) to advise of reasons for the party's interest in being an Administrator and a general description of the interested party's capacity and experience in being the Administrator. Although Expressions of Interest are not being submitted through a public portal, Expressions of Interest should nevertheless not contain any proprietary information.

Dated: April 6, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

Appendix A—Proposed Request for Qualifications (RFQ)

[Note: HUD is not soliciting applications at this time]

HUD proposes to rate the qualifications of an Administrator applicant on three rating factors described below, and eligible applicants, as determined through the solicitation of Expressions of Interest, will be asked to submit applications that address these factors. Only applicants (a single third party *or* a partnership of third parties) that can meet the competencies of both activities 1 and 2 should submit applications. If applying as a partnership, a lead applicant must be named in the application. The lead applicant also will be responsible for managing the scope of work in the activities applied for by the partnership.

The total number of points possibly awarded for an application is 190 points.

The applicant must answer all questions in the RFQ. Applicants that leave questions unanswered will be determined to have submitted incomplete applications, and their applications will not be considered.

The rating factors are described below.

I. Rating Factors

Rating Factor 1: Demonstrated Capacity of the Applicant and Relevant Organizational Staff (70 Points):

A. Previous Experience (40 points)

1. General question (10 points): HUD is interested in the applicant's demonstrated history of direct public service or placement of public servants within the last 24 months. This must include a brief explanation about the objectives, goals and work of the applicant, and any awards that the applicant has received for public service. In addition, please include any information on previous work, partnerships or collaborations with the federal or local government. If applying as a partnership, please provide a brief explanation for all third parties in the partnership.

2. The following questions relate ONLY to Activity 1 (15 points). Provide at least one example of recent experience within the last 24 months where the applicant has managed activities similar to the ones covered under Activity 1. The applicant's explanation should include a discussion of the tasks undertaken, actual results achieved, and the specific skills and resources applied to each task listed below:

a. The applicant must explain its demonstrated experience in working on projects that have required it to connect with other local networks, organizations and key individuals in cities. In addition, the applicant must explain how it has built and maintained these relationships with local networks, organizations and key individuals, and how integral this collaboration was to its project.

b. The applicant must explain its demonstrated experience in attracting and recruiting talented individuals from around the country, including those from top universities or other career networks.

c. The applicant must explain its demonstrated experience in managing staff and/or program participants remotely.

3. The following questions relate ONLY to Activity 2 (15 points). The applicant must provide at least one example of recent experience within the last 24 months where it has managed activities similar to the ones covered under Activity 2. The applicant's explanation must include a discussion of the tasks undertaken, actual results achieved, and the specific skills and resources applied to each task listed below:

a. The applicant must explain its demonstrated experience in developing training curriculum for a public service and/or community or economic development program and how it has trained past participants. In addition, please include the length of training; the types of training past participants underwent (e.g. classroom instruction, site visits, workshops); and how it has recruited instructors and speakers to enhance the trainings.

b. The applicant must explain its demonstrated experience in partnering with other organizations, individuals are institutions to develop training curriculum for a fellowship program.

B. Management Structure (30 points)

Organization Structure (20 points): HUD is interested in understanding the applicant's capacity to support the fellowship program in relation to ALL activities described in the RFQ.

1. The applicant must provide a description of its management structure, including an organizational chart that identifies all key management positions and the names and positions of staff managing ALL key tasks described in the RFQ that are associated with both activities described in the RFQ. The applicant must also describe the key staff and their specific roles and responsibilities for the management of its proposed activities. Please also include a one paragraph description that describes the previous experience as it relates to the assigned activities of all key staff.

If applying as a partnership, the applicant must provide this information for each third party and also describe the management structure of the partnership and the role of each third party. The applicant also must explain briefly how the partnership will work together to ensure that the activities will be achieved successfully and how decisions will be made.

2. References (10 points). The applicant must include at least two references for recent work similar to the programs covered under the RFQ that has been undertaken by the applicant. If a partnership, the applicant must include two references for each third party in the partnership.

At least one reference must be from an organization, individual or institution that you have worked with in the past 24 months applicable to the activity(s) you are applying for. This reference must be submitted in the form of a letter (one-page maximum) that includes a contact name, address, phone number and email address so that HUD may verify the information.

A second reference may be taken from a brief newspaper or journal article, program evaluation, or a transcript from a reputable independent source other than you. No video or audio recording may be submitted.

Rating Factor 2: Soundness of Approach (100 Points):

A. Proposed Activities (85 points)

1. The applicant must briefly describe the activities it proposes to undertake in the RFQ application, including any additional activities it plans to undertake that will not be funded by the fellowship program.

In addition, for Activity 1 (50 points), please address specifically in the proposal the following:

a. HUD recognizes that key to the success of the fellowship program will be determined by the close collaboration and communication between the national and local third parties. While HUD has not selected the pilot cities, HUD would like the applicant to describe in detail:

i. How it plans to identify and select the local organizations or individuals that it will work with to meet the objectives of Activity 1.

ii. How it anticipates each local organization or individual will communicate and work with it to ensure the success of the fellowship program.

iii. What it thinks the key responsibilities of the local organizations would be to accomplish the tasks associated with Activity 1.

b. HUD is interested in learning where and how the applicant plans to market the program to secure the most qualified fellows. The applicant must explain its process of recruiting fellows for the program. The applicant must include a discussion of how it plans to market and reach out to various places to recruit qualified fellows.

c. HUD is interested in learning the applicant's process for selecting fellows. While HUD recognizes that some of the fellow selection will be based on the needs of the pilot cities, HUD is looking for an explanation of the applicant's proposed selection process and any proposed criteria for fellows it may have in addition to the fellows criteria in Appendix B. Information in this process may include additional consultants and experts the applicant may hire, how it plans to conduct the interviews, and what additional criteria—given its understanding of fellowship programs—it may look for in fellows.

d. HUD would like to know how the applicant plans to identify any additional training opportunities (including site visits, workshops, and conferences) for fellows in the program.

e. HUD recognizes that mentoring fellows will be critical to the success of the program. Therefore, HUD expects the applicant to have a close mentor relationship with each fellow. The applicant must explain how it plans to mentor fellows one-on-one and in group settings, and how it plans to help them resolve or work through their challenges as they arise in the program. The applicant must also explain how it plans to identify high level, strategic projects for the fellows.

f. The applicant must provide HUD with a list and description of possible metrics it thinks would be valuable to collect for evaluation.

For Activity 2 (30 points), the applicant must address specifically in the proposal the following:

The applicant must explain how it plans to develop training curriculum and how it plans to train fellows. The applicant must include a discussion on how its proposed training curriculum would advance and enhance leadership skills among fellows, and how its training curriculum would prepare fellows for the fellowship program.

a. In addition, the applicant must include other organizations it may use to help develop the curriculum. The applicant must list the types of training it plans to have fellows undertake (*e.g.* workshops, classroom training, *etc.*) including potential instructors or speakers, and how it plans to recruit qualified instructors and speakers. The applicant must describe the type of materials it plans to develop to train fellows and if applicable, describe any certifications it might offer to fellows.

b. The applicant must explain how it will develop the orientation training for fellows and include a description of the types of materials it plans to develop to train fellows.

c. The applicant must describe the types of site visits it plans to undertake to enhance

the learning experience of fellows. The applicant must also explain how it plans to identify, develop and/or implement any additional trainings it thinks would be helpful in the fellowship program.

2. Activity 1 & Activity 2 (5 points) As referenced in III.A.1.a Leveraging, HUD recognizes that the full cost of the program will likely exceed the $2.5 million granted under the RFQ. Nevertheless, HUD is requesting that the applicant indicate how it will use the $2.5 million by providing a list or table showing the amount of funds budgeted for each activity for years 1 and 2. If a partnership, the applicant must indicate also the responsible third party for each use and activity.

a. In addition, as referenced in section III.A.1 *Payment of Fellows,* HUD recognizes that the cost of the fellow stipends under the fellowship program is unknown as HUD is in the process of negotiating stipend share between what the pilot cities and the fellowship program will each pay. For your budget, please include a category for fellow stipends for years 1 and 2. HUD anticipates that fellows will be paid $60,000 per year (for a total of $120,000 for years 1 and 2 for each fellow). Please assume that the program will pay 75 percent of this stipend for years 1 and 2 (this amounts to $45,000 for each year). Given your proposed budget, HUD wants to see the maximum number of fellows that could be funded with the $2.5 million grant.

B. Project Completion Schedule (5 points)

1. For the activity(s) the applicant is applying for, the applicant must briefly describe the project completion schedule, including milestones in each month for 24 months for the critical management actions for the applicant, start and end dates of each activity, and the expected metrics and results.

C. Performance and Monitoring (10 points)

1. HUD grantees must have a plan for monitoring and funds control plan for all program activities to ensure successful performance. This includes an internal audit function. An internal audit function will continually examine potentially risky areas of program operations and management and provide regular and valuable feedback to program managers and to those who hold them accountable. This feedback will include identification of risky management practices and missing or ineffective internal controls, areas that are not in compliance with program requirements, and ineffective implementation of established policies. For the activity(s) the applicant is applying for in this factor, the applicant must:

a. Describe your monitoring and funds control plan.

b. Describe how you will meet the internal audit requirement. Specifically identify the position(s) and agency responsible for internal audit.

Rating Factor 3: Leveraging of Other Funds (20 Points): HUD does not require matching funds to be awarded grants from the RFQ. However, as referenced in III.A.1.a *Leveraging,* HUD expects that the applicant that is awarded the grant will secure additional funding support from other philanthropic organizations. As a result, HUD will put greater preference on applicants that can draw additional financial support. In this rating factor, HUD would like to know the applicant's experience in securing philanthropic support and its ability to leverage existing funds.

1. In this factor, the applicant must describe its success in securing philanthropic support for projects similar or related to any or all of the activities the applicant is applying for in the RFQ.

2. The applicant must also describe its plans for reaching out to other philanthropic organizations or private institutions, and fundraising activities it plans to undertake if granted funds from the RFQ.

3. The applicant must indicate, where appropriate, if it currently has commitments of additional funds from other philanthropic organizations or private institutions and how those funds might be leveraged for this program.

II. Award Administration Information

A. Award Notices

HUD will send written notifications to both successful and unsuccessful applicants. A notification sent to a successful applicant is not an authorization to begin performance. Upon notification that an applicant has been selected for award, HUD will request additional information to be submitted or may work with the applicant to amend information that was already submitted as part of the application.

B. Code of Conduct

After selection, but prior to award, applicants selected for funding will be required to provide HUD with their written Code of Conduct if they have not previously done so and it is not recorded on the HUD Web site at: *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm.*

C. Administrative and National Policy Requirements

After selection for funding but prior to award, applicants must submit financial and administrative information to comply with applicable requirements. These requirements are found in 24 CFR part 84 for all organizations, except states and local governments whose requirements are found in 24 CFR part 85. Cost principles requirements are found at OMB Circular A–122 for nonprofit organizations, OMB Circular A–21 for institutions of higher education, OMB Circular A–87 for states and local governments, and at 48 CFR 31.2 for commercial organizations. Applicants must submit a certification from an Independent Public Accountant or the cognizant government auditor, stating that the applicant's financial management system meets prescribed standards for fund control and accountability.

D. Federal Funding Accountability and Transparency Act of 2006

Applicants selected for funding will be required to report first sub-grant award and executive compensation information, where both their initial award is $25,000 or greater, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282). The prime grant awardees will have until the end of the month plus one additional month after an award or sub-grant is obligated to fulfill the reporting requirement. The Federal Funding Accountability and Transparency Act (FFATA) of 2006 calls for the establishment of a publicly available Web site to disclose the use of Federal finance assistance.

a. The Act requires the reporting of the following data for first-tier sub-grants of $25,000 or more:

(1) Name of entity receiving award.

(2) Amount of award.

(3) Funding agency.

(4) NAICS code for contracts/CFDA program number for grants.

(5) Program source.

(6) Award title descriptive of the purpose of the funding action.

(7) Location of the entity (including congressional district).

(8) Place of performance (including congressional district).

(9) Unique identifier of the entity and its parent; and.

(10) Total compensation and names of top five executives (same thresholds as for primes).

b. The Transparency Act also requires the reporting of the Total Compensation and Names of the top five executives in either the prime awardee or a sub-awardee's organization if:

(1) More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25M annually; and

(2) Compensation information is not already available through reporting to the SEC.

The statute exempts from reporting any sub-awards less than $25,000 made to individuals or to an entity whose annual expenditures are less than $300,000. OMB has published Interim Final Guidance to agencies regarding the FFATA subrecipient reporting requirements in the Federal Register on September 14, 2010 (75FR55663.)

E. Equal Employment Opportunity

All contracts under the fellowship program shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

F. Additional Information

This issuance does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under

the National Environmental Policy Act of 1969 (42 U.S.C. 4321)."

Appendix B: Fellowship Placement Pilot Program—Fellows Criteria for Selection

The fellows selection of the fellowship program will be open nationally to all qualified applicants. The Administrator will help develop the application and selection criteria for new recruits. The Administrator will conduct the competition for fellows.

At minimum, core perquisites must require that candidates:

- Have 3–5 years of work experience, where candidates with graduate degrees are preferred;
- Make a 2 year commitment;
- Have prior experience in the area of community development, economic development, community or other public service, or related field;
- Be a problem solver, critical thinker and potential manager;
- Have a proven track record of entrepreneurship or social entrepreneurship, ability to work through bureaucracies to get things done; and
- Demonstrate a commitment and passion to public service.

In addition, applicants will be asked to rank order their location choices, and to articulate their interest in, or connection to any particular location(s). The selected Administrator may explore giving preference to candidates that already live in a pilot city.

The selection process for fellows may involve multiple rounds of review that will culminate to several in-person group interviews. After the in-person interviews, a selection committee will make the final selection decisions. Fellows that best match the needs of the pilot cities based on their existing area of knowledge and skill set will be selected for the program. To ensure fellows are properly matched to the needs of each pilot city, the selection process will include a review of the results from the city assessments that were initially conducted for each pilot city before selection.

[FR Doc. 2011–8782 Filed 4–12–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N074; 96300–1671–0000–P5]

Endangered Species Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before May 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.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Oklahoma City Zoological Park, Oklahoma City, OK; PRT–30321A

The applicant requests a permit to import a captive-held male Asian elephant (*Elephas maximus*) born in the wild from African Lion Safari & Game Farm Ltd., Ontario, Canada, for the purpose of enhancement of the survival of the species through propagation.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Franklin Brown, Rainbow City, AL; PRT–33362A

Applicant: David Phillips, St. Paul, MN; PRT–37678A

Applicant: Carlos Ramirez, Houston, TX; PRT–38803A

Dated: April 8, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–8861 Filed 4–12–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2011–N041; 1261–0000–80230–W5]

South Farallon Islands Nonnative Mouse Eradication Project; Farallon National Wildlife Refuge, California; Intent To Prepare an Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to gather information necessary to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA, for a proposed project to eradicate nonnative mice from the South Farallon Islands, part of the Farallon National Wildlife Refuge off the coast of California. We encourage the public and other agencies to participate in the planning process by sending written comments on management actions that we should consider.

DATES: To ensure that we have adequate time to evaluate and incorporate suggestions and other input, we must receive your comments on or before May 27, 2011.

ADDRESSES: Send written comments or requests to be added to our project mailing list to: Gerry McChesney, Refuge Manager, Farallon National Wildlife Refuge, 9500 Thornton Avenue, Newark, CA 94560. Alternatively, you may send written comments or requests by fax to (510) 745–9285 or by e-mail to *sfbaynwrc@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Gerry McChesney, Refuge Manager, (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Background

In 2009, the Service completed a Comprehensive Conservation Plan (CCP) and Environmental Assessment/Finding of No Significant Impact to guide the management of Farallon National Wildlife Refuge over a 15-year period (75 FR 5102 February 1, 2010). The wildlife management goal of the selected management alternative in the CCP is to protect, inventory, monitor, and restore to historic levels breeding populations of 12 seabird species, 5 marine mammal species, and other native wildlife. One of the strategies identified to meet this goal is the eradication of the house mouse and the prevention of future human introduction of mice.

We now propose to eradicate nonnative house mice (Mus musculus) from the South Farallon Islands. The purpose of this project is to protect and restore the ecosystem of the South Farallon Islands, particularly for seabirds and other native biological resources. The South Farallon Islands have sustained ecological damage over many years from the presence of introduced mice.

In 1909, President Theodore Roosevelt established the Farallon National Wildlife Refuge (Refuge), as a preserve and breeding ground for marine birds under Executive Order 1043. The Refuge originally encompassed only the North and Middle Farallon Islands and Noonday Rock. In 1969 the Refuge was expanded to include the South Farallon Islands and is still managed with the same basic purpose today. The isolated nature, varied and extensive habitats, and adjacent productive marine environment make the South Farallon Islands an ideal breeding and resting location for wildlife, especially seabirds and marine mammals. The Refuge comprises the largest continental U.S. seabird breeding colony south of Alaska, and supports the world's largest breeding colonies of ashy storm-petrel (*Oceanodroma homochroa*), Brandt's cormorant (*Phalacrocorax penicillatus*) and western gull (*Larus occidentalis*). Prior to the introduction of non-native mammals, the South Farallon Islands were nearly devoid of land-based predatory threats. Introduced European rabbits and cats, which were later removed, and mice, which remain on the South Farallon Islands today, have had noticeable negative impacts on native species.

Introduced nonnative mice directly and indirectly cause negative impacts to the populations of small burrow- and crevice-nesting seabirds on the South Farallones, particularly storm-petrels. In order to reduce this impact, the Service has identified mouse eradication as a critical step in fulfilling its main purpose to protect and restore the native ecosystems of the South Farallon Islands. Eradicating mice would increase the survivorship, and would likely increase the local population sizes, of at least two seabird species, the ashy storm-petrel and Leach's storm-petrel. The eradication project may also benefit other seabirds, as well as native amphibians, insects, invertebrates, and plants, including the endemic Farallon arboreal salamander (*Aneides lugubris farallonensis*) and Farallon camel cricket (*Farallonophilus cavernicolus*).

The Service has initially identified three possible alternatives:

(1) No Action, which would allow mice to remain on the South Farallon Islands, maintaining the status quo.

(2) Mouse eradication, with an aerial broadcast of granular pellets with the rodenticide brodifacoum as the primary technique, with the entire island group treated simultaneously.

(3) Mouse eradication, with an aerial broadcast of granular bait pellets with the rodenticide brodifacoum as the primary technique, conducted in phases, in which different islands of the group would be treated from days to weeks apart.

The Service is currently determining what measures could be included to minimize adverse effects to nontarget species, while ensuring that every mouse has access to the bait during the eradication window.

Public Comment

We are furnishing this notice in accordance with section 1501.7 of the NEPA implementing regulations, to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. We invite written comments from interested parties to ensure identification of the full range of alternatives, issues and concerns. Information gathered through this scoping process will assist us in developing a range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS. The EIS will also address the direct, indirect, and cumulative impacts of the alternatives on environmental resources and identify appropriate mitigation measures for adverse environmental effects.

Written comments we receive become part of the public record associated with this action. 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.

In addition to providing written comments, the public is encouraged to attend a public scoping meeting to provide us with suggestions and information on the scope of issues and alternatives to consider when drafting

the EIS. A public scoping meeting will be held in San Francisco, California, in the spring of 2011. We will mail a separate announcement to the public with the exact date, time, and location of the public scoping meeting. We will accept both oral and written comments at the scoping meeting.

NEPA Compliance

We will conduct environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. We anticipate that a draft EIS will be available for public review in the fall of 2011.

Dated: April 7, 2011.

Alexandra Pitts,

Regional Director, Pacific Southwest Region.

[FR Doc. 2011–8813 Filed 4–12–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES 11–02]

Cle Elum Dam Fish Passage Facilities and Fish Reintroduction Project; Kittitas County, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) for the Cle Elum Dam Fish Passage Facilities and Fish Reintroduction Project.

SUMMARY: The Bureau of Reclamation (Reclamation) is notifying the public that it has prepared an FEIS on the proposed Cle Elum Dam Fish Passage Facilities and Fish Reintroduction Project. The Washington State Department of Ecology is a joint lead with Reclamation in the preparation of the FEIS, in coordination with the Washington Department of Fish and Wildlife and the Yakama Nation. The Bonneville Power Administration has assumed the role of a cooperating agency. The FEIS will also be used to comply with requirements of the Washington State Environmental Policy Act.

Reclamation published a Draft EIS in the **Federal Register** on February 3, 2010 (75 FR 562622) with a public comment period ending on March 22, 2010. Revisions were made in the FEIS to incorporate responses to comments. The FEIS also identifies Alternative 3, Right Bank Juvenile Passage with Right Bank Adult Passage without Barrier Dam as the preferred alternative.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after filing of the FEIS with the Environmental Protection Agency. After the 30-day waiting period, Reclamation will complete a Record of Decision. The Record of Decision will identify the selected action for implementation and will discuss factors and rationale used in making the decision.

ADDRESSES: Bureau of Reclamation, Columbia-Cascades Area Office, attention: Candace McKinley, Environmental Program Manager, 1917 Marsh Road, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Candace McKinley, Environmental Program Manager, Telephone (509) 575–5848, ext. 276, fax: (509) 454–5650. The FEIS and other information on this project can be found at *http://www.usbr.gov/pn/programs/ucao_misc/fishpassage/.* To receive a hard copy or compact disc of the FEIS refer to the above contact.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, Reclamation is evaluating the construction of downstream juvenile fish passage and upstream adult fish passage alternatives at the dam for the Cle Elum Dam Fish Passage Facilities Project. Cle Elum Dam did not include fish passage facilities when constructed in 1933; consequently, fish passage to upstream habitat for fish species was blocked.

As part of the effort to restore fish above Cle Elum Dam, the Washington Department of Fish and Wildlife, in collaboration with the Yakama Nation, is evaluating the implementation of a project to reintroduce fish populations above the dam. The reintroduction plan would involve the transportation and release of adults for natural spawning and potentially hatchery supplementation techniques to restore fish above the dam.

Early in 2001, Yakima River basin interest groups urged Reclamation to incorporate fish passage facilities as part of the reconstruction of Keechelus Dam under the Safety of Dams program. Reclamation determined that fish passage facilities could not be added under existing Safety of Dams authority. However, in the January 2002 Record of Decision for Keechelus Dam Modification EIS, Reclamation committed to seek funding under existing authorities to conduct a feasibility study for providing fish passage at all Yakima Project storage dams. Additionally, Reclamation agreed to mitigation agreement terms and Hydraulic Project Approval conditions with Washington Department of Fish and Wildlife to investigate fish passage feasibility. In 2003, Reclamation prevailed in a suit filed by the Yakama Nation concerning the NEPA and Endangered Species Act compliance for the Keechelus Safety of Dams project. The Yakama Nation then appealed that decision to the 9th Circuit Court of Appeals. In 2006, Reclamation and the Yakama Nation entered into a settlement agreement to resolve litigation in which the parties agreed to collaborate to prepare technical plans and a planning report for fish passage at Cle Elum and Bumping Lake Dams. This FEIS is part of the agreed-upon planning process for Cle Elum Dam only. An EIS for Bumping Lake fish passage will be prepared separately at a future time.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Dated: January 5, 2011.

Karl E. Wirkus,

Regional Director, Pacific Northwest Region.

[FR Doc. 2011–8862 Filed 4–12–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Notice of Possible Shutdown of Investigative Activities

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to shut down its investigative activities in the event of the absence of an appropriation.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information

concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* 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 is issuing this notice because of the potential for an absence of an appropriation as of 12:01 a.m. on Saturday, April 9, 2011. If the Commission does not receive funding by 8:45 a.m. on Monday, April 11, 2011, the agency will shut down its investigative activities for the duration of the absence of appropriation. These activities include, but are not limited to, proceedings conducted under the authority of Title VII of the Tariff Act of 1930, including antidumping and countervailing duty investigations and reviews; investigations and ancillary proceedings conducted under the authority of section 337 of the Tariff Act of 1930; and investigations conducted under the authority of section 332 of the Tariff Act of 1930.

If a shutdown occurs, the schedules for all investigative activities will be tolled. All hearings and conferences will be postponed, subject to the exception described below. Once the Commission receives funding and the period of the shutdown ends, all schedules will resume starting with the day on which the Commission recommences operations. For example, if the shutdown lasts four days (*e.g.,* April 11–14), then the deadline for the filing of any document on April 14 would be extended four days to April 18, 2011. If a rescheduled deadline falls on a nonbusiness day, the deadline will be extended to the next business day. The agency may reconsider schedules after resuming operations.

Notwithstanding the general tolling of schedules, each staff conference in preliminary antidumping and countervailing duty investigations scheduled to take place on April 20, 21, or 22, 2011, will take place as scheduled if the Commission resumes operations by April 14, 2011. Should the shutdown not end before April 14, 2011, all conferences will be rescheduled pursuant to the general tolling provisions described above.

The Commission's World Wide Web site, at *http://www.usitc.gov,* will be updated to the extent practicable to provide information on the status of the agency.

The authority for the Commission=s determination is contained in section 335 of the Tariff Act of 1930, as amended (19 U.S.C. 1335), and in 31 U.S.C. 1341 *et seq.*

By order of the Commission.

Issued: April 8, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–8842 Filed 4–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Elder Justice Roadmap Project

AGENCY: Civil Division, Department of Justice.

ACTION: 60-day notice of information collection under review.

The Civil Division of Department of Justice (DOJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. June 13, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laurie Feinberg, 601 D Street, NW., Room 9109, Washington, DC 20004; (202) 305–1789.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Laurie Feinberg at 202–305–1789 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Elder Justice Roadmap Project.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Adult practitioners, advocates and researchers in professions related to elder justice. A recent review of literature related to elder justice indicates that the field remains largely fragmented and without a clear set of priorities or a roadmap for advancement. The purpose of this data collection is to identify policy, practice, and research priorities in the field of elder abuse, neglect, and exploitation and to help develop a strategic roadmap for activities to address those priorities. In the first phase of the study, concept mapping will be used to create a visual representation of the ways that professionals in the field perceive the priorities for elder justice. Concept mapping is a well-documented method of applied research that makes explicit, implicit theoretical models that can be used for planning and action. The process requires respondents to brainstorm a set of statements relevant to the topic of interest ("brainstorming" task), individually sort these statements into piles based on perceived similarity ("sorting" task), rate each statement on one or more scales ("rating" task), and interpret the graphical representation that result from several multivariate analyses. The collection of data for all concept mapping activities will be facilitated via a dedicated project Web site. The second phase of the study includes a series of six face-to-face

facilitated discussions with relevant stakeholder groups, practitioners, and researchers. In addition up to 9–12 interviews with experts in the various aspects of the field will be conducted to obtain their reaction to the preliminary concept map generated by the brainstorming, sorting, and rating process and asked to provide information about what may be missing, need amplification, or to be interrelated in a different manner than on the preliminary concept map. Guiding questions and discussion prompts, derived from the concept mapping results, will be used to gather information from the respondents on the meaning and potential use of the concept mapping results. This input will be aggregated and linked to the emerging conceptual framework that will result in a better understanding of the complex interrelationships between policy, practice, and research elements in the field of elder justice. Thus, the challenges, and needs of practitioners on the front lines will inform the work of researchers, and the researchers' findings will inform the work of policy makers and practitioners, and the policy makers will communicate with researchers and practitioners about what information thy need to properly inform policy. A single concept mapping process will provide an efficient means for managing participation while simultaneously integrating perspectives that are complementary and mutually informative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 750 respondents total will participate in the concept mapping phase of this collection, and that 60 respondents total will participate in the facilitated discussions. The table below shows the estimated number of respondents for each portion of the collection:

Task	Participation targets	Total task target
Concept Mapping:.		
Brainstorming	750	750
Sorting	250	250
Rating	750	750
Total group target	.....	750

Facilitated discussion	Participation targets	Total target
Policy maker group 1	10	10
Policy maker group 2	10	10
Practitioner group 3	10	10
Practitioner group 4	10	10
Researcher group 5	10	10
Researcher group 6	10	10
Total group target	10	60
Expert Interview	9–12	9–12

The brainstorming task will take respondents 5–10 minutes to complete. The sorting task will take respondents approximately 30–60 minutes to complete. The rating task will take respondents approximately 30 minutes to complete. None of these tasks will require participants to complete in one sitting; rather, participants can return to work on task completion as often as they chose, until the task deadline. Respondents will have approximately 4 weeks to brainstorm and approximately 6 weeks to sort and rate. Facilitated discussions will require approximately 4 hours of respondents' time.

Expert interview will require no more than 90 minutes of respondents' time.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 948 total public burden hours associated with this collection. This is planned to be a one-time data collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: April 7, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–8788 Filed 4–12–11; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on April 8, 2011, the proposed Consent Decree in *United States* v. *John Williams, et al,* Civil Action No. 11–00689–PHX–MEA, was lodged with the United States District Court for the District of Arizona. The proposed Consent Decree resolves the United States' claims under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), against John M. Williams, Jr., Arizona Public Service Co., the Salt River Project, Public Service Company of New Mexico, and El Paso Electric Co. relating to response costs incurred and to be incurred by the United States Environmental Protection Agency ("EPA") at or from a Site known as the Gila River Indian Reservation Removal Site, also referred to as the Gila River Boundary Site, located in Maricopa County, Arizona. The consent decree also resolves potential CERCLA counterclaims against the United States Department of the Interior.

Under the terms of the proposed consent decree, John M. Williams, Jr., Arizona Public Service Co., the Salt River Project, Public Service Company of New Mexico, El Paso Electric Co., and the United States Department of Interior will reimburse EPA in the amount of $462,500. EPA's total response costs are approximately $1 million.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *John Williams, Jr.,* Civil Action No. 11–00689–PHX–MEA (U.S.D.C. D. AZ) (DOJ Ref. No. 90–11–3–09420). The Consent Decree may be examined at U.S. Environmental Protection Agency, Office of Regional Counsel, EPA IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–8912 Filed 4–12–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested: U.S. Official Order Forms for Schedule I and II Controlled Substances (Accountable Forms); Order Form Requisition DEA Form 222, 222a, Controlled Substances Order System

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 13, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy A. Gallagher at 202–307–7297 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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 submission of responses.

Overview of information collection 1117–0010:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* U.S. Official Order Forms for Schedule I and II Controlled Substances (Accountable Forms); Order Form Requisition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 222 and 222a.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit; State, local, or tribal government.

Abstract: DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data are needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Order Form. Persons may also digitally sign and transmit orders for controlled substances electronically, using a digital certificate. Orders for Schedule I and II controlled substances are archived and transmitted to DEA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 109,632 registrants participate in this information collection, taking an estimated 17.33 hours per registrant annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 1,898,970 annual burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: April 7, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–8748 Filed 4–12–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OCR) Docket No. 1548]

Hearings of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold hearings in Washington, DC on April 26–27, 2011. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of sexual victimization in U.S. prisons, and the common characteristics of prisons with the highest and lowest incidence of rape, respectively, based on an anonymous survey by the BJS of inmates in a representative sample of U.S. prisons. On August 26, 2010, the BJS issued the report *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09.* The report provides a listing of prisons grouped according to the prevalence of reported sexual victimization, and formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: The hearing schedule is as follows:

1. Tuesday, April 26, 2011, 9 a.m. to 5:30 p.m.: Bureau of Justice Statistics; Dr. Barbara Owen—nationally-known expert on women's prison culture; Elkton Federal Correctional Institution—facility with a low prevalence of sexual victimization; Bridgeport, Texas, Pre-Parole Treatment Facility—facility with a low prevalence of sexual victimization; James V. Allred Unit, Texas—facility with a high prevalence of sexual victimization.

2. Wednesday, April 27, 2011, 9 a.m. 4 p.m.: James V. Allred Unit, Texas—facility with a high prevalence of sexual victimization; Elmira, New York, Correctional Facility—facility with a high prevalence of sexual victimization; Fluvanna, Virginia, Correctional Center for Women—facility with a high prevalence of sexual victimization.

ADDRESSES: The hearings will take place at the Office of Justice Programs Building, Video Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Joseph Swiderski, Designated Federal Official for the Panel at (202) 514–8615. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from the hearings will assist the Panel in carrying out its statutory obligations. The witness list is subject to amendment; please refer to the Review Panel on Prison Rape Web site at *http://www.ojp.usdoj.gov/reivewpanel.htm* for any updates regarding the hearing schedule. Space is limited at the hearing location. Members of the public who wish to attend the hearing in Washington, DC must present government-issued photo identification upon entrance to the Office of Justice Programs. Special needs requests should be made to Joseph Swiderski, Designated Federal Official, OJP, *Joseph.Swiderski@usdoj.gov* or (202) 514–8615, at least one week before the hearings.

Michael Alston,

Director, Office for Civil Rights, Office of Justice Programs.

[FR Doc. 2011–8781 Filed 4–12–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Waiver of Surface Facilities Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Application for Waiver of Surface Facilities Requirements," to the Office of Management and Budget (OMB) for review and approval for continued 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 May 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, Mine Safety and Health Administration (MSHA), 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: 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: MSHA regulations require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. See CFR 71.400 through 71.402 and 75.1712–1 through .1712–3. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver, and the regulations provide procedures by which an operator may apply for and be granted a waiver. See 30 CFR 71.403, 71.404, 75.1712–4, and 75.1712–5. Applications are filed with the District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds on which the waiver is requested.

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 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0024. The current OMB approval is scheduled to expire on April 30, 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 December 17, 2010 (75 FR 79033).

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 publication of this notice in the **Federal Register.** In order to ensure appropriate consideration, comments should reference OMB Control Number 1219–0024. 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 submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Application for Waiver of Surface Facilities Requirements.

OMB Control Number: 1219–0024.

Affected Public: Private sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 933.

Total Estimated Number of Responses: 933.

Total Estimated Annual Burden Hours: 357.

Total Estimated Annual Costs Burden: $4,665.

Dated: April 7, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8787 Filed 4–12–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines," to the Office of Management and Budget (OMB) for review and approval for continued 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 May 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, Mine Safety and Health Administration (MSHA), 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: 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: Identification of the miner representative, notification of mine owner and operator legal identity, and notification of commencement of operations and closing of mines provide information to help ensure the health and safety of mine workers by identifying responsibility for mining operations.

These information collections are 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 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0042. The current OMB approval is scheduled to expire on April 30, 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 December 17, 2010 (75 FR) 79031.

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 publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1219–0042. 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 submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

OMB Control Number: 1219–0042.

Affected Public: Private sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 11,367.

Total Estimated Number of Responses: 11,367.

Total Estimated Annual Burden Hours: 2,517.

Total Estimated Annual Costs Burden: $4,659.

Dated: April 7, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8823 Filed 4–12–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Office of Trade and Labor Affairs; Request for Comments on Labor Capacity-Building Efforts Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCIES: Office of the Secretary, Labor, and Office of the United States Trade Representative.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor and the United States Trade Representative in preparing a report on labor capacity-building efforts under Chapter 16 ("the Labor Chapter") and Annex 16.5 of the Dominican Republic—Central America—United States Free Trade Agreement ("the CAFTA–DR"), as well as efforts made by the CAFTA–DR countries to implement the recommendations contained in the report entitled "The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity" ("the White Paper"). This report is required under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act ("the CAFTA–DR Implementation Act"). The reporting function and the responsibility for soliciting public comments required under this Act were assigned to the Secretary of Labor, in consultation with the United States Trade Representative.

DATES: Written comments are due no later than 5 p.m. May 20, 2011.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTACAFTA@dol.gov.* Submissions by facsimile may be sent to: Paula Church Albertson, Deputy Division Chief of Trade Agreement Administration and Technical Cooperation, Office of Trade and Labor Affairs, U.S. Department of Labor at (202) 693–4851 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Deputy Division Chief of Trade Agreement Administration and Technical Cooperation, Office of Trade and Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210. Telephone (202) 693–4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

During the legislative approval process for the CAFTA–DR, the Administration and the Congress reached an understanding on the need to support labor capacity-building efforts linked to recommendations identified in the White Paper of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. A total of $155 million was appropriated in support of labor and environment capacity-building in FY 2005 through FY 2009. For more information on these initiatives, see the full text of the CAFTA–DR and the White Paper as well as other relevant fact sheets and reports posted on the respective Web sites of the Office of the United States Trade Representative, *http://www.ustr.gov/Trade_Agreements/Regional/CAFTA/Section_Index.html,* and the International Labour Organization (ILO) Subregional Office for Central America, Haiti, Panama and the Dominican Republic, *http://web.oit.or.cr/* (follow the link to: Sector IV, Diálogo Social, and then link to: Verification of the White Paper, Central America and the Dominican Republic).

In addition, in December 2006, the USDOL published the procedural guidelines for the receipt and review of submissions under U.S. Free Trade Agreements, including the CAFTA–DR (71 FR 76691 Dec. 21, 2006). Subsequently, the U.S. held the first Labor Affairs Council meeting in November 2008, pursuant CAFTA–DR Article 16.4.2. Since the CAFTA–DR came into force, OTLA has received, accepted and reviewed one submission, issuing a public report in January 2009. OTLA received a second submission, and will decide whether to accept this submission in April 2011.

Under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), the President must report biennially to the Congress on the progress made by the CAFTA–DR countries in implementing the labor obligations and the labor capacity-building provisions found in the Labor Chapter and Annex 16.5 and implementing the recommendations contained in the White Paper. Section 403(a)(4) requires the President to establish a mechanism to solicit public comments on the matters described in section 403(a)(3)(D) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a)(4).

By Proclamation, the President delegated the reporting function and the responsibility for soliciting public comments under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), to the Secretary of Labor, in consultation with the United States Trade Representative. Proclamation No. 8272, 73 FR 38,297 (June 30, 2008). This notice serves to request public comments as required by this section.

2. Information Sought

The Department of Labor is seeking comments on the following topics as required under Section 404(a)(3)(D) of the CAFTA–DR Implementation Act:

1. Capacity-building efforts by the United States government envisaged by Article 16.5 of the CAFTA–DR Labor Chapter and Annex 16.5;

2. Efforts by the United States government to facilitate full implementation of the White Paper recommendations;

3. Efforts made by the CAFTA–DR countries to comply with Article 16.5 of the Labor Chapter and Annex 16.5 and to fully implement the White Paper recommendations, including progress made by the CAFTA–DR countries in affording to workers internationally-recognized worker rights through improved capacity; and

4. Efforts made by the governments of the Parties to the CAFTA–DR to fulfill their Labor Chapter (Chapter 16) commitments under the CAFTA–DR.

3. Requirements for Comments

This notice requests comments in response to a general solicitation to the public. Written comments may be submitted by 5 p.m. May 20, 2011. To ensure prompt and full consideration of comments, it is strongly recommended that comments be submitted by electronic mail to the following e-mail address: *FRFTACAFTA@dol.gov.* Persons making comments by e-mail should use the following subject line: Comments pursuant to CAFTA–DR

Implementation Act. Documents should be submitted in MSWord format. Supporting documentation submitted as spreadsheets is acceptable in Excel format. Persons who make comments by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the comments themselves. Similarly, to the extent possible, any attachments to the comments should be included in the same file as the comments themselves, not as separate files. In the event that e-mail comments are not possible, comments should be sent by facsimile to (202) 693–4851 (this is not a toll-free number). Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5303, 200 Constitution Avenue, NW., Washington, DC 20210. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 693–4900 (this is not a toll-free number).

Signed at Washington, DC, the 7th day of April 2011.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2011–8971 Filed 4–12–11; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–033)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within sixty calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Scientific and Technical Information (STI) Program Office desires to seek out customer feedback from industry, academia, research institutes, other government, as well as individual members of the public, in order to assess the impact of the STI disseminated to those populations in terms of cost avoidance, schedule gain, productivity, innovation, and potential job creation.

II. Method of Collection

We intend to introduce the feedback questionnaire by initially by e-mail in reply to fulfilled information requests initiated by customers; however, customers accessing STI online will also have an option to provide their feedback via e-mail or web-based questionnaire as part of the document retrieval process.

III. Data

Title: NASA STI Impact Assessment.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Industry, academia, research institutes, other government, individuals.

Estimated Number of Respondents: 500 annually.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 17 hours.

Estimated Annual Cost for Respondents: $3.50.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Fran Teel,

Acting NASA Clearance Officer.

[FR Doc. 2011–8762 Filed 4–12–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTIC AND SPACE ADMINISTRATION

[Notice: (11–032)]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Information Collection. This is a 30-day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, NASA Headquarters has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: All comments should be submitted within 15 calendar days following the date of this publication.

ADDRESSES: Written comments may be submitted to Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By

qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide NASA Headquarters projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 1,000.

Respondents: 200,000 annually.

Annual Responses: 200,000.

Frequency of Response: Once per request.

Average Minutes per Response: 15 minutes.

Burden Hours: 50,000 hours (over three years).

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

Fran Teel,

Acting NASA Clearance Officer.

[FR Doc. 2011–8761 Filed 4–12–11; 8:45 am]

BILLING CODE 7510–13–P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–034)]

National Environmental Policy Act; Sounding Rockets Program; Poker Flat Research Range

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct scoping for continuing sounding rocket operations at Poker Flat Research Range (PFRR), Alaska.

SUMMARY: Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA intends to prepare an EIS for its continued use of the University of Alaska-Fairbanks (UAF) owned and managed PFRR, outside of Fairbanks, Alaska. The U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and UAF will serve as Cooperating Agencies as they possess both regulatory authority and specialized expertise regarding the Proposed Action that will be the subject of the EIS.

The purpose of this notice is to apprise interested agencies, organizations, tribal governments, and individuals of NASA's intent to prepare the EIS and to request input regarding the definition of reasonable alternatives and significant environmental issues to be evaluated in the EIS.

In cooperation with BLM, UAF, and USFWS, NASA will hold public scoping meetings as part of the NEPA process associated with the development of the EIS. The scoping meeting locations and dates identified at this time are provided under **SUPPLEMENTARY INFORMATION** below.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, on or before June 1, 2011, to assure full consideration during the scoping process.

ADDRESSES: Comments submitted by mail should be addressed to Joshua Bundick, Manager, Poker Flat Research Range EIS, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Comments may be submitted via e-mail to *Joshua.A.Bundick@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Joshua Bundick, Manager, Poker Flat Research Range EIS, NASA Wallops Flight Facility, Wallops Island, Virginia 23337; telephone (757) 824–2319; e-mail: *Joshua.A.Bundick@nasa.gov.* Additional information about NASA's Sounding Rocket Program (SRP) and the University of Alaska-Fairbanks' PFRR may be found on the internet at *http://sites.wff.nasa.gov/code810* and *http://www.pfrr.alaska.edu,* respectively. Information regarding the NEPA process for this proposal and supporting documents (as available) are located at *http://sites.wff.nasa.gov/code250/pfrr_eis.html.*

SUPPLEMENTARY INFORMATION:

Programmatic Background

NASA's SRP, based at the Goddard Space Flight Center's Wallops Flight Facility (WFF), supports the NASA Science Mission Directorate's strategic vision and goals for understanding the phenomena affecting the past, present, and future of Earth and the solar system and supports the Agency's educational mission. The suborbital missions enabled by the SRP provide researchers with opportunities to build, test, and fly new instrument concepts while simultaneously conducting world class scientific research. With its hands-on approach to mission formulation and execution, the SRP also helps ensure that the next generation of space scientists receives the training and experience necessary to move on to NASA's larger, more complex missions.

Launch Sites

Sounding rockets can be launched from permanently established ranges or from temporary launch sites using NASA's mobile range assets. Permanent ranges include WFF in Wallops Island, Virginia; PFRR near Fairbanks, Alaska; White Sands Missile Range (WSMR) in White Sands, New Mexico; Kwajalein Island, Marshall Islands Republic; Esrange, Kiruna, Sweden; and the Norwegian Rocket Range, Andøya, Norway. In the past, temporary launch sites have included Australia, Brazil, Greenland, and Puerto Rico. The majority of sounding rocket launches occur at WSMR, WFF, and PFRR.

Where the SRP conducts its work is highly dependent on the scientific goals of each mission. For example, if equatorial phenomena must be observed, a site such as Brazil is used. For middle latitudes, Wallops Island, Virginia, or White Sands, New Mexico, are selected. If the aurora borealis must be observed, a northern latitude is required, such as at PFRR.

PFRR Background

The PFRR, located northeast of the unincorporated village of Chatanika, Alaska, consists of approximately 2,100 hectares (5,200 acres) of land that house rocket and payload support facilities, launch pads, and tracking infrastructure. Since the late 1960s, NASA, other government agencies, and educational institutions have supported suborbital rocket launches from the PFRR. While the PFRR is owned and managed by the Geophysical Institute of UAF, the NASA SRP has exclusively funded and managed the support contract with PFRR for more than 25 years.

The northern location of the PFRR is strategic for launching sounding rockets for scientific research in auroral space physics and earth science. The PFRR is the only high-latitude, auroral-zone rocket launching facility in the United States where a sounding rocket can readily study the aurora borealis and the sun–Earth connection. Recent Earth science-based missions have furthered the understanding of ozone depleting substances in the upper atmosphere. Such studies are critical for the continual refinement of theories and research on the topics of ozone depletion, global warming, and climate change. Recent space physics-focused missions have measured the upper atmospheric winds and auroras in the ionosphere. The information collected further assists the nation's scientists in understanding the interactions between the sun and Earth as well as the origin and evolution of the solar system. Technology development and validation enabled by the SRP at the PFRR is critical in furthering the development of Earth and space science instruments at a fraction of the size and cost that would result from using other launch methods. The PFRR facility also supports educational outreach programs where students and scientists from various universities are able to conduct aeronautics and space research.

Additionally, from an operational perspective, PFRR is an ideal location for sounding rocket missions. Directly north (downrange) from the launch site are vast areas of open, very sparsely populated lands of interior Alaska and the Arctic Ocean to the extreme north. Having the ability to launch rockets over such a vast area with very low population density is critical to ensuring public safety.

Existing SRP NEPA Documents and Context

In 2000, NASA published a Final Supplemental EIS (FSEIS) for the SRP. The 2000 FSEIS considered SRP operations at a programmatic level and expanded upon the original SRP EIS prepared in 1973, to include multiple launch sites, new launch vehicles, and updated environmental conditions. In its Record of Decision for the 2000 FSEIS, NASA decided to continue SRP operations at its current level of effort at all launch sites, including PFRR. Since then, NASA has launched approximately four (4) sounding rockets annually from PFRR primarily during the winter months. It is expected that this launch rate at PFRR would continue to satisfy NASA's needs into the reasonably foreseeable future.

NASA recently reviewed its 2000 SRP FSEIS and determined that the overall environmental analysis in the 2000 SRP FSEIS remains sufficient to support the Agency's broad programmatic decision to continue the SRP, however potential changes in both PFRR operations and the environmental context of the launch corridor north of PFRR warrant preparation of additional PFRR-specific environmental analysis to better inform Agency decisions regarding PFRR. For example, PFRR is now considering a more rigorous rocket and payload recovery process. Additionally, a large portion of downrange lands are undergoing wilderness review, which could ultimately affect how rocket and payload recoveries are handled.

Accordingly, NASA began the preparation of an Environmental Assessment to determine if those changes presented potentially a significant impact necessitating an EIS. During the scoping process for the EA in the fall of 2010, NASA solicited input from over 75 potentially interested agencies and organizations. A number of conservation organizations expressed concern regarding NASA's continued operations at PFRR and requested that a more detailed assessment be performed. As such, NASA decided that an EIS would be the most appropriate level of NEPA documentation for the proposal. The subject EIS will tier from the programmatic 2000 FSEIS and provide a focused analysis of SRP operations at PFRR.

Cooperating Agency Actions

The PFRR EIS will serve as a decision-making tool not only for NASA but also for its two Federal Cooperating Agencies, BLM and USFWS. Directly north of the PFRR facility are its downrange flight zones, over which rockets are launched and within which spent stages and payloads impact the ground. Within these flight zones are landmasses owned or managed by several Federal, State and Native Alaskan organizations, including the USFWS, BLM, Alaska Department of Natural Resources, Doyon Regional Corporation, and the Native Village of Venetie Tribal Government. More specifically, the subject Federal lands within the PFRR flight corridor are BLM's North Steese Conservation Area and White Mountain National Recreational Area, and the UFWS-managed Arctic and Yukon Flats National Wildlife Refuges (NWRs). Historically, the managing entities have issued UAF annual or multi-year special-use authorizations and agreements for impact of rockets and recovery operations on these lands. BLM and USFWS are currently considering if and how future authorizations for rocket landing and recovery would be issued for the properties under their management. Additionally, both agencies are currently preparing long-term management plans for their respective landholdings. BLM is currently drafting its Eastern Interior Resource Management Plan; Arctic NWR is currently updating its Comprehensive Conservation Plan (CCP); and the revision of the Yukon Flats NWR CCP is expected to begin within the next two years. The results of these planning processes will play a significant role in how future launches from PFRR would occur. As such, the PFRR EIS will consider the effects of each agency's respective permitting actions within the context of their long-term management objectives.

Alternatives

The EIS will consider a range of alternatives that meet NASA's needs for obtaining the requisite earth and space science data afforded by high-latitude sounding rocket launches in support of both NASA's science and educational missions.

Alternatives currently being considered for evaluation in the EIS include:

• Continuing the SRP in its present form and at the current level of effort;

• Continuing SRP launches from PFRR within the existing flight zones with differing requirements for identification and recovery of spent stages and payloads;

• Modifying the trajectories of the existing flight zones; and

• Conducting a subset of launches at other high-latitude launch sites, thereby avoiding the federally-managed lands.

The No Action Alternative is to discontinue sounding rocket launches from PFRR. NASA anticipates that the areas of potential environmental impact from each alternative of most interest to the public will be: The effects of rocket and payload landing and recovery on special interest lands (including Wilderness Areas and Wild Rivers), considerations to ensure public safety during rocket flight, and potential effects on subsistence uses on lands within the flight zones.

Scoping Meetings

NASA and its Cooperating Agencies plan to hold three public scoping meetings to provide information on the PFRR EIS and to solicit public comments regarding environmental concerns and alternatives to be considered in the EIS. The public scoping meetings are scheduled as follows:

—Friday, April 29, 2011, at the Tribal Hall, Third and Alder Streets, Fort Yukon, Alaska, 1 p.m.–4 p.m.

—Monday, May 2, 2011, at the University of Alaska-Fairbanks, William R. Wood Student Center, 505 South Chandalar Drive, Fairbanks, Alaska, 2 p.m.–4 p.m.

—Monday, May 2, 2011, at the Pioneer Park, Blue Room, 2300 Airport Way, Fairbanks, Alaska, 6 p.m.–8 p.m.

—Tuesday, May 3, 2011, at the United States Fish and Wildlife Service Alaska Regional Office, Gordon Watson Conference Room, 1011 East Tudor Road, Anchorage, Alaska, 2 p.m.–4 p.m. and 6 p.m.–8 p.m.

As the EIS is prepared, the public will be provided several opportunities for involvement, the first of which is during scoping. Even if an interested party does not have input at this time, other avenues, including reviews of the Draft and Final EIS, will be offered in the future. The availability of these documents will be published in the **Federal Register** and through local news media to ensure that all members of the public have the ability to actively participate in the NEPA process.

In conclusion, written public input on alternatives and environmental issues and concerns associated with NASA's SRP launches at PFRR that should be addressed in the EIS are hereby requested.

Olga M. Dominguez,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2011–8844 Filed 4–12–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–035)]

NASA Advisory Council; Space Operations Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC) Space Operations Committee.

DATES: Tuesday, May 3, 2011, 8 a.m.–2 p.m. local time.

ADDRESSES: Doubletree Hotel, 2080 North Atlantic Ave, Cocoa Beach, FL 32931.

FOR FURTHER INFORMATION CONTACT: Mr. Jacob Keaton, NAC Space Operations Committee Executive Secretary, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1507, *jacob.keaton@nasa.gov*.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Space Operations Mission Directorate FY2012 Budget.

—Commercial Crew Development Program status.

—Commercial Orbital Transportation System status.

—21st Century Launch Complex status.

—Recommendation preparation and discussion.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–8845 Filed 4–12–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–036)]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Tuesday, May 3, 2011, 9 a.m.–11:45 a.m., Local Time.

ADDRESSES: NASA Headquarters, Conference Room 8D48, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, Phone: 202–358–2183, fax: 202–358–4336.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

• Overview of the GAO Quick Look Book.

• Overview of the NASA Strategic Plan.

• Committee Discussion.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the Audit, Finance, and Analysis Committee meeting in room 8D48 before receiving an access badge. All non-U.S. citizens

must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. social Security Number (if applicable), and place and date of entry into the U.S., fax to Charlene Williams, Executive Secretary, Audit, Finance, and Analysis Committee, FAX (202) 358–4336, by no later than April 21, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Charlene Williams at (202) 358–2183, or fax: (202) 358–4336.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–8847 Filed 4–12–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 13, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1–545–08–24, 6 items, 4 temporary items). Records of the Field Management Division, including program notices, non-substantive reports, and case files for revising procedures and standards. Proposed for permanent retention are substantive reports, program directives, and handbooks containing official procedures and standards.

2. Department of Agriculture, Risk Management Agency (N1–258–09–11, 2 items, 2 temporary items). Master files of electronic information systems containing compliance review case files and information used to track fraud, waste, and abuse.

3. Department of the Army, Agency-wide (N1–AU–10–54, 1 item, 1 temporary item). Master files of an electronic information system used by original equipment manufacturers to develop interactive electronic technical manuals for Army and Marine vehicle systems, including vehicle system troubleshooting, procedural maintenance, and part repair data.

4. Department of the Army, Agency-wide (N1–AU–10–91, 1 item, 1 temporary item). Master files of an electronic information system used to

manage data of aircraft components, aviation maintenance, usage, and vibratory data.

5. Department of the Army, Agency-wide (N1–AU–11–16, 1 item, 1 temporary item). Master files of an electronic information system used by the National Guard Bureau to budget, track, and report on all financial matters, including records related to contracting services, government purchase card transactions, training funds, and travel funds.

6. Department of Army, Agency-wide (N1–AU–11–18, 1 item, 1 temporary item). Master files of an electronic information system used by the National Guard Bureau to identify and develop programs which automate requirements not included in standard Army systems, including logistical data on weapons, electronic equipment, vehicles, aviation, and medical equipment.

7. Department of the Army, Agency-wide (N1–AU–11–21, 1 item, 1 temporary item). Master files of an electronic information system used by the National Guard Bureau to manage supply, finance, maintenance, man-hour accountability, and reports on the maintenance and repair of aircraft, including budget, supply, maintenance, and time and attendance data.

8. Department of Health and Human Services, Office of the Secretary (N1–468–10–1, 14 items, 11 temporary items). Records of the Departmental Appeals Board, including administrative correspondence files; internship program files; judge and attorney working files; master files of electronic systems containing case tracking information and a roster or mediators; alternative dispute resolution training materials; and board and administrative law judge case files. Proposed for permanent retention are records of the chairman, program correspondence files, and official board decisions.

9. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–11–11, 5 items, 5 temporary items). Master files of an electronic information system used to generate, log, and track subpoenas, summonses, and notices of employment eligibility verification inspections. No evidence is maintained in this system.

10. Department of Homeland Security, Transportation Security Administration (N1–560–10–2, 3 items, 3 temporary items). Records of the Federal Air Marshal Service training program, including course assessments, syllabi, instructor biographies, class requests, rosters, test scores, student awards, and disciplinary documents.

11. Department of Housing and Urban Development, Agency-wide (N1–207–09–03, 8 items, 8 temporary items). Web content of agency external and intranet sites; copies of content posted in social media tools; and web management records including design standards, reports of site traffic, and links.

12. Department of Housing and Urban Development (N1–207–10–2, 63 items, 58 temporary items, 5 permanent items). Legal records previously approved on prior schedules being submitted for media neutral status, including delegations of authority, legislative and regulatory records, litigation files, legal opinions, and attorney working files. Proposed for permanent retention are delegations of authority and several categories of legal opinions, including opinions specifically linked to Public Housing Authorities or selected as significant by the Office of General Counsel.

13. Department of the Interior, Office of the Special Trustee for American Indians (N1–75–09–9, 4 items, 1 temporary item). Scanned images of probate case file records maintained for reference. Proposed for permanent retention are hard copy probate case files and related electronic data.

14. Department of the Interior, Office of Surface Mining (N1–471–10–5, 2 items, 1 temporary item). Master files of an electronic information system used to document coal reclamation problems. Proposed for permanent retention are periodic snapshots of the master files.

15. Department of Justice, Federal Bureau of Investigation (N1–65–11–6, 1 item, 1 temporary item). Records of the Criminal Justice Information Services Division, including documents submitted to the FBI in support of requests to produce identification records. These documents are not scanned or included in the management database for processing requests.

16. Department of Justice, Justice Management Division (N1–60–11–8, 1 item, 1 temporary item). Legacy video recordings and documentation created as a part of routine business functions or events.

17. Department of Justice, Office of the Inspector General (N1–60–10–17, 10 items, 4 temporary items). Working files and case files of audits, evaluations, and inspections examining expenditure of funds within the Department in which no specific investigation is conducted. Proposed for permanent retention are internal and external reports, follow-up files, and case files of investigations of significant value.

18. Department of State, Bureau of Diplomatic Security (N1–59–09–36, 1 item, 1 temporary item). Master file of an electronic system used to track criminal investigations primarily relating to visa and passport fraud. If the Department of State becomes aware of any significant or precedent-setting cases that warrant preservation, the Department will notify NARA and an independent appraisal of these cases will be conducted.

19. Department of the Treasury, Financial Management Service (N1–425–09–1, 9 items, 7 temporary items). Records pertaining to agency debt collection activities, including routine debt management procedures, announcements and fact sheets, transaction level collections data for federal servicing programs as well as for treasury account servicing, routine and ad hoc reports and consolidated data, and debt management project and program management records. Proposed for permanent retention are debt collection policy directives and decisions as well as significant reports on debt collection activities.

20. National Aeronautics and Space Administration, Agency-wide (N1–255–10–4, 14 items, 12 temporary items). Records not required for documenting the history of both manned and unmanned space flight and routine administrative records. Proposed for permanent retention are programs and project records that document the history of both manned and unmanned space flight, including aerospace technology research and basic or applied scientific research.

Dated: April 6, 2011.

Sharon G. Thibodeau,

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2011–9103 Filed 4–12–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that nine meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Literature (application review): May 18–19, 2011 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on May 18th and from 9 a.m. to 5 p.m. on May 19th, will be closed.

Literature (application review): May 20, 2011 in Room 716. This meeting, from 9 a.m. to 5:15 p.m., will be closed.

Design/Our Town (application review): May 25–27, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on May 25th, from 9 a.m. to 6 p.m. on May 26th, and from 9:30 a.m. to 5 p.m. on May 27th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202–682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202–682–5691.

Dated: April 8, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–8825 Filed 4–12–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the Advisory Committee for International Science and Engineering, #25104 have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Effective date for renewal is April 15, 2011. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: April 8, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–8905 Filed 4–12–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee of Visitors Panel for the Experimental Program to Stimulate Competitive Research Science and Technology Centers (STC) #1373.

Dates: May 16, 2011; 6 p.m.–8 p.m. May 17, 2011; 8:30 a.m.–5 p.m. May 18, 2011; 8 a.m.–4 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Partially Open.

Contact Person: Dr. Dragana Brzakovic, Senior Staff Associate, Office of Integrative Activities, National Science Foundation, Suite 935, 4201 Wilson Blvd., Arlington, VA 22230, (703) 292–8040.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda

May 16, 2011

6 p.m.–8 p.m. Open Session; Welcome, overview of STC program.

May 17, 2011

8:30 a.m.–5 p.m. Closed Session; Review and Evaluation of Program.

May 18, 2011

8 a.m.–3 p.m. Closed Session; Review, evaluation, and report writing.

3 p.m.–4 p.m. Open Session; Presentation of report.

Reason for Closing: Certain sessions of the meeting are closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: April 8, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–8797 Filed 4–12–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans (CPP) Task Force on Unsolicited Mid-Scale Research (MS), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: April 19, 2011, 11 a.m.–12 p.m. EDT.

SUBJECT MATTER: (1) Summary of the March 31, 2011 National Science Board (NSB) Mid-Scale Research Task Force small discussion group meeting in Denver, Colorado; (2) Update on the Mid-Scale Research Task Force survey development; (3) Update and discussion of the June 5–7 Mid-Scale Research Task Force workshop plans; and, (4) Discussion of the May NSB Mid-Scale Research Task Force meeting agenda

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A room will be available for the public to listen-in to this meeting held by teleconference at Stafford Place I, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. All visitors must contact the Board Office [call 703–292–7000 or send an e-mail message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the room number and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board website *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2011–9053 Filed 4–11–11; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 13, 2011. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2012–001

1. *Applicant:* Paul Ponganis, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204.

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans to capture up to 10 fledgling emperor chicks for research studies at University of California, San Diego. The volume of the air sacs and lungs are critical to the diving physiology of penguins in at least two ways. First, the respiratory oxygen store is estimated to comprise one-third to one-half the total body O_2 stores in various species. And second, the ratio of air sac to lung volume is a potential mechanism for prevention of pulmonary barotrauma ("lung squeeze"). Yet the volumes of the air sacs and lungs have never been directly measured in any penguin species. There have only been indirect estimates based on simulated dives in pressure chambers or on buoyancy-swim speed calculations during dives at sea. Therefore, in this research project, air sac and lung volumes in emperor penguins (*Aptenodytes forsteri*), king penguins (*A. patagonicus*), and Adélie penguins (*Pygoscelis adeliae*) will be measured by 3D reconstructions from computerized tomography (CT) and magnetic resonance imaging (MRI) scans. The study, to be conducted in collaboration with the University of California San Diego Keck Center for Magnetic Resonance Imaging, will utilize captive birds. Subjects from the latter two species are already available. Most of the captive emperor penguins would be considered geriatric and at risk for anesthesia, therefore emperor penguins will be exported as chicks, and then raised and maintained for the study. The export of 10 chicks will have no impact on the Cape Washington colony as emperor penguin chick censuses between 1983 and 2005 have been as high as 24,000 chicks.

Given (a) the significance of the volume of the air sacs and lungs in determination of the magnitude and distribution of total body O_2 stores, (b) the lack of verification of indirect estimates of diving air volume in penguins, (c) the possibility of air exhalation during many dives of penguins, and (d) the limited data used to construct allometric equations to predict air sac/lung volume on the basis of body mass, it is imperative to obtain direct measures of air sac and lung volumes in emperor penguins, king penguins, and Adélie penguins. Such direct measurements would provide the maximum available respiratory volume for O_2 store calculations and allow better evaluation and interpretation of data obtained with indirect techniques at sea for the three species. This is especially important for emperor penguins, as it is the species in which the most detailed diving physiology studies are available.

Location

Cape Washington, Terra Nova Bay, Victoria Land.

Dates

September 1, 2011 to December 31, 2012.

Suzanne H. Plimpton,

Management Analyst, National Science Foundation.

[FR Doc. 2011–8737 Filed 4–12–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to give public notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 13, 2011. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant Paul Ponganis, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204..	Permit Application No. 2012–001

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans to capture up to 10 fledgling Emperor chicks for research studies at University of California, San Diego. The volume of the air sacs and lungs are critical to the diving physiology of penguins in at least two ways. First, the respiratory oxygen store is estimated to comprise one-third to one-half the total body O_2 stores in various species. And second, the ratio of air sac to lung volume is a potential mechanism for prevention of pulmonary barotrauma ("lung squeeze"). Yet the volumes of the air sacs and lungs have never been directly measured in any penguin species. There have only been indirect estimates based on simulated dives in pressure chambers or on buoyancy-swim speed calculations during dives at sea. Therefore, in this research project, air sac and lung volumes in emperor penguins *(Aptenodytes forsteri)*, king penguins *(A. patagonicus)*, and Adélie penguins *(Pygoscelis adeliae)* will be measured by 3D reconstructions from computerized tomography (CT) and magnetic resonance imaging (MRI) scans. The study, to be conducted in collaboration with the University of California San Diego Keck Center for Magnetic Resonance Imaging, will utilize captive birds. Subjects from the latter two species are already available. Most of the captive emperor penguins would be considered geriatric and at risk for anesthesia, therefore emperor penguins will be exported as chicks, and then raised and maintained for the study. The export of 10 chicks will have no impact on the Cape Washington colony as emperor penguin chick censuses between 1983 and 2005 have been as high as 24,000 chicks.

Given (a) the significance of the volume of the air sacs and lungs in determination of the magnitude and distribution of total body O_2 stores, (b) the lack of verification of indirect estimates of diving air volume in penguins, (c) the possibility of air exhalation during many dives of penguins, and d) the limited data used to construct allometric equations to predict air sac/lung volume on the basis of body mass, it is imperative to obtain direct measures of air sac and lung volumes in emperor penguins, king penguins, and Adélie penguins. Such direct measurements would provide the maximum available respiratory volume for O_2 store calculations and allow better evaluation and interpretation off data obtained with indirect techniques at sea for the three species. This is especially important for emperor penguins, as it is the species in which the most detailed diving physiology studies are available.

Location

Cape Washington, Terra Nova Bay, Victoria Land.

Dates

September 1, 2011 to December 31, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–8772 Filed 4–12–11; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–72; NRC–2011–0079; EA–11–039]

In the Matter of Indiana Michigan Power Company; DC Cook Nuclear Plant Independent Spent Fuel Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Indiana Michigan Power Company.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: 301–492–3316; fax number: 301–492–3348; e-mail: *Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the NRC (or the Commission) is providing notice, in the matter of DC Cook Nuclear Plant Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

NRC has issued a general license to Indiana Michigan Power Company (I&M), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations (10 CFR) part 72. This Order is being issued to I&M because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at I&M's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. I&M shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Waterford Steam Electric Station's physical security plan. I&M shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. I&M must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, I&M must receive written verification from the NRC that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B. 1. I&M shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause I&M to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide I&M's justification for seeking relief from, or variation of, any specific requirement.

2. If I&M considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, I&M must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, I&M must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. I&M shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. I&M shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

I&M's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by I&M as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, I&M must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, I&M and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which I&M relies and the reasons as to why the Order should not have been issued. If a person other than I&M requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The

E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use
E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by I&M or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), I&M may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request

for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 6th day of April 2011.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) Contains Safeguards Information and Is Not Included in the Federal Register Notice

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, Dated June 3, 2010

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past 3 years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than 3 years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent 2 years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with "Protection of Information," in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past 3 years, and/or academic enrollment and attendance in lieu of employment, for the past 5 years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past 3 years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed 5 years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine

whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information," in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last 5 years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of 3 years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than 1 year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–05B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov.* The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–492–3531. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right to Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one 1 year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

agency (*i.e.,* law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2011–9007 Filed 4–12–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29627; File No. 812–13806]

National Life Insurance Company, et al.

April 7, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Life Insurance Company ("NLIC"), National Variable Annuity Account II ("Annuity Account"), National Variable Life Insurance Account ("Life Account", and together with Annuity Account, "Separate Accounts").

SUMMARY OF APPLICATION: Applicants request an order of the Commission pursuant to Section 26(c) of 1940 Act, as amended, approving the substitution of shares of the Money Market Portfolio (the "Replacement Portfolio") of the Variable Insurance Products Fund V ("VIPFV") for shares of the Money Market Fund (the "Substituted Portfolio") of the Sentinel Variable Products Trust ("SVPT") held by the Separate Accounts to support variable annuity contracts or variable life insurance contracts (collectively, the "Contracts") issued by NLIC.

FILING DATE: The application was originally filed on July 26, 2010 and amended on December 13, 2010, and March 28, 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 Secretary of the Commission and serving NLIC with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 28, 2011, and should be accompanied by proof of service on NLIC in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Lisa F. Muller, Counsel, National Life Insurance Company, National Life Drive, Montpelier, Vermont 05604.

FOR FURTHER INFORMATION CONTACT: Craig Ruckman, Attorney-Adviser, at (202) 551–6753 or Michael Kosoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6754.

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. NLIC is a stock life insurance company, all the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company established under Vermont law on January 1, 1999. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. For purposes of the 1940 Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

2. Under Vermont law, the assets of each Separate Account attributable to the Contracts through which interests in that Separate Account are issued are owned by NLIC but are held separately from all other assets of NLIC for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, the assets in each Separate Account equal to the reserves and other contract liabilities of the Separate Account are not chargeable with liabilities arising out of any other

business that NLIC may conduct. Income, gains and losses, realized or unrealized, from assets allocated to each Separate Account are credited to or charged against that Separate Account without regard to the other income, gains or losses of NLIC. Each Separate Account is a "separate account" as defined by Rule 0–1(e) under the 1940 Act, and is registered with the Commission as a unit investment trust.[1]

3. The Annuity Account is divided into sixty-four subaccounts. Each subaccount invests exclusively in shares of a corresponding investment portfolio (a "Portfolio") of one of fifteen series-type management investment companies, including the SVPT. The assets of the Annuity Account support variable annuity contracts, and interests in the Separate Account offered through such contracts have been registered under the Securities Act of 1933, as amended (the "1933 Act"), on Form N–4 (File No. 333–19583).

4. The Life Account is divided into sixty-eight subaccounts. Each subaccount invests exclusively in shares of a corresponding investment portfolio (also, a "Portfolio") of one of sixteen series-type management investment companies, including the SVPT. The assets of the Life Account support variable life insurance contracts, and interests in the Separate Account offered through such contracts have been registered under the 1933 Act on Form N–6 (File Nos. 33–91938, 333–44723, 333–151535, and 333–67003).

5. SVPT is registered under the 1940 Act as a diversified, open-end management investment company.[2] SVPT currently consists of six investment portfolios, including the Substituted Portfolio, and issues a separate series of shares of beneficial interest in connection with each. SVPT has registered such shares under the 1933 Act on Form N–1A (File No. 333–35832).

6. Sentinel Asset Management, Inc. ("Sentinel") serves as the investment adviser to each SVPT Portfolio. Sentinel manages the Porfolios' investments and the business operations of the SVPT under the overall supervision of the SVPT board of trustees. Sentinel has the responsibility for making all investment decisions for the SVPT Portfolios and receives an investment management fee from each Portfolio. Sentinel is a registered investment adviser. Sentinel is an indirect wholly-owned subsidiary of National Life Holding Company and therefore is under common control with NLIC.

7. VIPFV is registered under the 1940 Act as a diversified, open-end management investment company.[3] Currently, VIPFV has 31 investment portfolios, one of which—the Replacement Portfolio—would be involved in the proposed Substitution. VIPFV issues a separate series of shares of beneficial interest in connection with each portfolio and has registered such shares under the 1933 Act on Form N–1A (File No. 33–17704).

8. Fidelity Management & Research Company ("FMR") serves as the manager of each portfolio of VIPFV. As the manager, FMR has overall responsibility for directing portfolio investments and handling the VIPFV's business affairs. FMR receives an investment management fee from each portfolio. FMR is a registered investment adviser. Fidelity Investments Money Management, Inc. ("FIMM") and other affiliates of FMR serve as sub-advisers for the Replacement Portfolio. FIMM has the day-to-day responsibility of choosing investments for the Replacement Portfolio. In addition, Fidelity Research & Analysis Company ("FRAC"), another affiliate of FMR, serves as a sub-adviser for the Portfolio and may provide investment research and advice for the Portfolio.[4] None of VIPFV, FMR, FIMM, or FRAC are affiliated persons (or affiliated persons of affiliated persons) of any of the Applicants. Likewise, none of the Applicants are affiliated persons (or affiliated persons of affiliated persons) of VIPFV, FMR, FIMM, or FRAC.

9. Each Contract permits Contract owners to transfer contract value between and allocate contract value among the subaccounts. Currently, NLIC does not assess a transfer charge or limit the number of transfers permitted each year. However, NLIC reserves the right, upon prior notice, to impose a transfer charge of $25 for each transfer in excess of 12 in any one contract year. NLIC does have in place market timing policies and procedures that may operate to limit transfers. Under the Life Account, transfers resulting from loans, dollar cost averaging, portfolio rebalancing features, or the initial reallocation from a money market subaccount do not count as transfers for the purpose of determining the transfer charge.

10. Pursuant to each Contract, NLIC reserves the right to substitute shares of one portfolio for shares of another. Each Contract's prospectus discloses that NLIC reserves the right to substitute shares of one portfolio for shares of another if the shares of the portfolio should no longer be available for investment or, if in NLIC's judgment further investment in such portfolio shares should become inappropriate.

11. NLIC proposes to substitute Service Class Shares of the Money Market Portfolio of the Variable Insurance Products Fund V for shares of the Money Market Fund of the Sentinel Variable Products Trust ("Substitution").

12. The Applicants assert that the Substitution is necessary in order to provide the Contract owners with continued access to a money market portfolio investment option. Currently, the only money market portfolio investment option offered under the Contracts is the Substituted Portfolio. The Applicants contend that the Substituted Portfolio is small and, because it is only offered as an investment option under the Contracts, there is little prospect of it growing in size sufficiently to materially decrease its expense ratio or obtain economies of scale. In addition, Sentinel has been subsidizing the Substituted Portfolio's expenses for some time, but cannot continue to do so indefinitely.[5]

NLIC has determined that Contract owners would be better served if the Substituted Portfolio is closed and replaced as an investment option by another, larger, money market fund with lower expenses and better prospects for future growth and competitive yields.

13. The table below sets forth the name, investment adviser, investment objective, principal investment strategies, and principal risks of both the Substituted Portfolio and the Replacement Portfolio.

[1] File No. 811–08015 (Annuity Account); File No. 811–09044 (Life Account).

[2] File No. 811–09917.

[3] File No. 811–05361.

[4] FMR does not manage the sub-advisers for the VIPFV Money Market Portfolio pursuant to a "manager-of-managers" exemption.

[5] For the fiscal year ended December 31, 2010, Sentinel reimbursed the Substituted Portfolio in an amount equal to 0.37% of the Portfolio's average daily net assets. This reimbursement was made to avoid the Substituted Portfolio having a negative yield in the current very low interest rate environment. Sentinel may cease the reimbursement at any time and is only providing it to the extent necessary to avoid a negative yield.

	Substituted Portfolio	Replacement Portfolio
Name	Sentinel Variable Products Trust Sentinel Variable Products Money Market Fund.	Variable Insurance Products Fund V Money Market Portfolio.
Investment Adviser (*Subadviser*)	Sentinel	FMR (*FIMM, FRAC*).
Investment Objective	Seeks as high a level of current income as is consistent with stable principal values and liquidity.	Seeks as high a level of current income as is consistent with preservation of capital and liquidity.
Principal Investment Strategies	The Fund invests exclusively in dollar-denominated money market instruments, including U.S. government securities, bank obligations, repurchase agreements, commercial paper, and other corporate debt obligations. All such investments will have remaining maturities of 397 days or less.	FMR invests the Fund's assets in U.S. dollar-denominated money market securities of domestic and foreign issuers and repurchase agreements. FMR also may enter into reverse repurchase agreements for the Fund. FMR will invest more than 25% of the Fund's total assets in the financial services industries.
	The Fund may also invest up to 10% of its total assets in shares of institutional money market funds that invest primarily in securities in which the Fund could invest directly.	In buying and selling securities for the Fund, FMR complies with industry-standard regulatory requirements for money market funds regarding the quality, maturity, and diversification of the fund's investments.
	The Fund seeks to maintain a net asset value of $1.00 per share by using the amortized cost method of valuing its securities. The Fund is required to maintain a dollar-weighted average portfolio maturity of 90 days or less. The Fund may participate in a securities lending program.	FMR stresses maintaining a stable $1.00 share price, liquidity, and income.
Principal Risks	• General Fixed-Income Securities Risk • Government Securities Risk	• Interest Rate Charges. • Foreign Exposure. • Financial Services Exposure. • Issuer-Specific Changes.

14. The table below compares the investment management fees, distribution fees, other expenses, total operating expenses, fee waivers and net operating expenses for the year ended December 31, 2010, expressed as an annual percentage of average daily net assets, of the Substituted Portfolio and the Replacement Portfolio.

	Substituted Portfolio	Replacement Portfolio
	Sentinel Variable Products Trust Sentinel Variable Products Money Market Fund	Variable Insurance Products Fund V Money Market Portfolio
Management Fee	0.25%	0.18%
Distribution and Service (12b–1) Fee	None	0.10%
Other Expenses	0.27%	0.08%
Total Operating Expenses	0.52%	0.36%
Fee Waivers and Expense Reimbursements[6]	0.37%	N/A
Net Operating Expenses	0.15%	0.36%

[6] Fee waivers and expense reimbursements are not contractual and may be terminated at any time.

The management fee for the Replacement Portfolio in the table above consists of two components: a so-called "group" fee of 0.11% and an "income-related" fee of 0.07%. The income-related fee varies from month to month depending on the level of the Replacement Portfolio's monthly gross income from an annual rate of 0.05% of average daily net assets throughout the month when the annualized gross yield for the month is 0% to an annual rate of 0.27% of average daily net assets throughout the month when the annualized gross yield for the month is 15%. The group fee rate is based on the average daily net assets for all of the mutual funds managed by FMR. The group fee is capped at an annual rate of 0.37% of average daily net assets.

15. The table below compares the 1-year, 5-year, and 10-year average annual total return of the Substituted Portfolio and Replacement Portfolio, as well as the yield for the seven days ending December 31, 2010 and the net asset values of the Substituted Portfolio and Replacement Portfolio as of December 31, 2010.

	Substituted Portfolio	Replacement Portfolio
	Sentinel Variable Products Trust Sentinel Variable Products Money Market Fund	Variable Insurance Products Fund V Money Market Portfolio
1-Year Average Annual Return	0.00%	0.14%
5-Year Average Annual Return	2.24%	2.69%
10-Yr Average Annual Return	2.07%	2.40%
7-Day Yield	0.00%	0.11%
Net Asset Value	$15,290,904	$155,272,000

As of December 31, 2010.

16. As of the effective date of the Substitution (the "Effective Date"), each Separate Account will redeem shares of the Substituted Portfolio. The proceeds of such redemptions will then be used to purchase shares of the Replacement Portfolio, with the subaccount of the applicable Separate Account investing the proceeds of its redemption from the Substituted Portfolio in the applicable Replacement Portfolio. Redemptions and purchases will occur simultaneously so that contract values will remain fully invested at all times. All redemptions of shares of the Substituted Portfolio and purchases of shares of the Replacement Portfolio will be effected in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder. The Substitution will take place at relative net asset value as of the Effective Date with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in the money market subaccount of the appropriate Separate Account.

17. Contract values attributable to investments in the Substituted Portfolio will be transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge. Contract owners will not incur any additional fees or charges as a result of the Substitution, nor will their rights or NLIC's obligations under the Contracts be altered in any way and the Substitution will not change Contract owners' insurance benefits under the Contracts. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by NLIC. In addition, the Substitution will not impose any tax liability on Contract owners. The Substitution will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the Substitution than before the Substitution. NLIC will not exercise any right it may have under the Contracts to impose restrictions on transfers under the Contracts for the period beginning on the date the Application was filed with the Commission through at least thirty (30) days following the Effective Date.[7]

18. For twenty-four months following the Effective Date and for those Contracts with contract value invested in the Substituted Portfolio on the Effective Date, NLIC will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter), the sub-accounts investing in the Replacement Portfolio to the extent that the Replacement Portfolio's net annual expenses (taking into account contractual fee waivers and expense reimbursements) for such period exceeds, on an annualized basis, the net annual expenses (taking into account contractual fee waivers and expense reimbursements) of the Substituted Portfolio for the fiscal year ended December 31, 2010. In addition, for twenty-four months following the Effective Date, NLIC will not increase asset-based fees or charges for Contracts outstanding on the Effective Date.

19. Existing Contract owners as of the date the Application was filed, and new Contract owners who have purchased or who will purchase a Contract subsequent to that date but prior to the Effective Date, have been or will be notified of the proposed Substitution by means of a prospectus or prospectus supplement for each of the Contracts ("Pre-Substitution Notice"). The Pre-Substitution Notice will state that the Applicants filed the Application, set forth the anticipated Effective Date, explain that contract values attributable to investments in the Substituted Portfolio would be attributable to the Replacement Portfolio as of the Effective Date, and state that, from the date the Application was first filed with the Commission through the date thirty (30) days after the Substitution, Contract owners may make one transfer of contract value from the sub-account investing in the Substituted Portfolio (before the Substitution) or the Replacement Portfolio (after the Substitution) to one or more other sub-account(s) without a transfer charge and without that transfer counting against any contractual transfer limitations.

20. All Contract owners will receive a copy of the most recent prospectus for the Replacement Portfolio prior to the Substitution. Within five (5) days following the Substitution, Contract owners affected by the Substitution will be notified in writing that the Substitution was carried out. This notice will restate the information set forth in the Pre-Substitution Notice, and will also explain that the contract values attributable to investments in the Substituted Portfolio were transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge.

Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitution.

2. Applicants assert that Section 26(c) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

3. Applicants aver that Section 26(c) was intended to provide for Commission scrutiny of a proposed substitution which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial premium, an additional sales load upon

[7] One exception to this would be restrictions that NLIC may impose to prevent or restrict "market timing" activities by Contract owners or their agents.

reinvestment of the proceeds of redemption, or both.[8] The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption.

4. Applicants represent that each Contract and its prospectus reserves NLIC's right to substitute shares of one portfolio for shares of another.

5. Applicants contend that based on a comparison of the basic characteristics of the Replacement Portfolio and the Substituted Portfolio, the Substitution will provide Contract owners with substantially the same investment vehicle.

6. Applicants believe that the Replacement Portfolio and the Substituted Portfolio have substantially the same investment objectives and principal investment strategies, thus making the Replacement Portfolio an appropriate candidate for the Substitution. Both the Replacement Portfolio and the Substituted Portfolio seek a high level of current income as is consistent with stable principal values and liquidity. However, while both the Replacement Portfolio and the Substituted Portfolio pursue their investment objective by investing in U.S. dollar-denominated money market securities of domestic issuers as well as repurchase agreements, only the Replacement Portfolio invests in instruments issued by foreign issuers. Both the Replacement Portfolio and the Substituted Portfolio seek to maintain a net asset value of $1.00 per share as well as liquidity. Most significantly, both the Replacement Portfolio and the Substituted Portfolio must comply with the diversification and risk-limiting conditions of Rule 2a-7 under the Act. Notwithstanding one difference in the investment strategies, both the Replacement Portfolio and the Substituted Portfolio emphasize the same investment objective and follow substantially the same investment strategies to pursue those objectives. Thus, the Applicants believe that the money market investment option available to Contract owners will not change in any material respect as a result of the Substitution.

7. Applicants represent that the Replacement Portfolio entails substantially the same investment risks as does the Substituted Portfolio. In particular, given the diversification and risk-limiting conditions of Rule 2a–7 under the Act, the Replacement Portfolio cannot have a materially different risk profile than the Substituted Portfolio.

8. Applicants assert that the Substitution will result in a reduction in overall expenses of the Replacement Portfolio as compared to the Substituted Portfolio. Although the Service Class shares of the Replacement Portfolio are subject to a modest Rule 12b–1 distribution and shareholder service plan expense that the Substituted Portfolio does not bear, the total annual operating expenses for the Replacement Portfolio have been significantly less than the total annual operating expenses for the Substituted Portfolio in recent years.

9. The Applicants believe that Contract owners would benefit from the significantly larger size of the Replacement Portfolio and the somewhat higher yields that the Replacement Portfolio can be expected to provide, as contrasted with the size and recent yields of the Substituted Portfolio.

10. Applicants represent that for three years from the Effective Date, NLIC and persons under common control with NLIC will not receive in the aggregate any direct or indirect benefits from the Replacement Portfolio, its investment adviser, or its principal underwriter (or their affiliates) in connection with assets representing contract values (at the time of the substitution) of the Contracts, at a higher rate than they had received from the Substituted Portfolio, its investment adviser, or its principal underwriter (or their affiliates) including, without limitation: Rule 12b-1 fees, shareholder service fees, administrative fees or other service fees, revenue-sharing payments, or payments from other arrangements in connection with such assets.

11. Applicants submit that the Substitution meets the standards set forth in Section 26(c) and that, if implemented, the Substitution would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision. Further, Applicants submit that the replacement of the Substituted Portfolio with the Replacement Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act.

[8] House Comm. Interstate Commerce, Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong. 2d Session 337 (1966).

Conclusion

Applicants submit that for the reasons summarized above the proposed Substitution meets the standards of Section 26(c) of the 1940 Act and request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act.

For the Comission, by the Division of Investment Management pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8731 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

RINO International Corporation; Order of Suspension of Trading

April 11, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RINO International Corporation, because the company has failed to disclose that: (i) The outside law firm and forensic accountants hired by the audit committee to investigate allegations of financial fraud at the company resigned on or about March 31, 2011, after reporting the results of their investigation to management and the board; (ii) the chairman of its audit committee resigned on March 31, 2011; and (iii) the company's remaining independent directors have also resigned. Further, questions have arisen regarding, among other things: (i) The size of the company's operations and number of employees; (ii) the existence of certain material customer contracts; and (iii) the existence of two separate and materially different sets of corporate books and accounts. RINO is a Nevada corporation with its headquarters and operations in the People's Republic of China, which trades on OTC Link under the symbol "RINO."

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 company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 11, 2011, through 11:59 p.m. EDT, on April 25, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–9060 Filed 4–11–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64240; File No. SR–BX–2011–019]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

April 7, 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 March 31, 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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now 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.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period 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* [April 11, 2011]. If the pilot is not either extended or approved permanent by *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* [April 11, 2011], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) 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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, 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, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3]

The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. 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.[4]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that a four month extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. The Exchange notes, however, that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. Under such a mechanism, trades in a security outside a price band would not be allowed, thus eliminating clearly erroneous transactions from occurring altogether. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing 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.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[5] 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)[6] 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 transparency and uniformity across markets concerning decisions to break erroneous trades.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63490; (December 9, 2010), 75 FR 78299 (December 15, 2010).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–019 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–2011–019. 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–2011–019 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8849 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64231; File No. SR–ISE–2011–19]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2128 To Extend the Pilot Program

April 7, 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 March 31, 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 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule.

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 2128 (Clearly Erroneous Trades) to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

extend the expiration of the pilot rule. Amendments to ISE Rule 2128 to provide for uniform treatment of certain clearly erroneous execution reviews and transactions that occur before a trading pause is in effect on the Exchange were approved by the Commission on September 10, 2010 on a pilot basis to end on April 11, 2011.[3] The Exchange now proposes to extend the date by which this pilot rule will expire to the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[4] 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)[5] 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 relating to clearly erroneous trades 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.

[3] *See* Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–ISE–2010–62) (Extending the pilot period to December 10, 2010); 63481 (December 9, 2010), 75 FR 78275 (December 15, 2010) (Extending the pilot period to April 11, 2011).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[8] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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:

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–19 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–2011–19. 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–2011–19 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8809 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64232; File No. SR–NYSE–2011–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 128, Clearly Erroneous Executions, To Extend the Effective Date 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

April 7, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that March 31, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate 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. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's website at *http://www.sec.gov* and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, 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. The pilot is currently scheduled to expire on April 11, 2011.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events[5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128 would be in effect, and the NYSE would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Rule 128 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 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, 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, 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. More specifically, the NYSE believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule changes would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSE–2010–47). *See also* Securities Exchange Act Release No. 63479 (December 9, 2010), 75 FR 78274 (December 15, 2010) (SR–NYSE–2010–80).

[5] Terms not defined herein are defined in NYSE Rule 128.

[6] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under NYSE Rule 80C, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSE–2011–16.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–NYSE–2011–17 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–2011–17. 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–NYSE–2011–17 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8808 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64233; File No. SR–NYSEAmex–011–24]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 128, Clearly Erroneous Executions, To Extend the Effective Date 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

April 7, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 31, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate 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. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's Web site at *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, 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. The pilot is currently scheduled to expire on April 11, 2011.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Amex Equities Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events [5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of NYSE Amex Equities Rule 128 would be in effect, and the NYSE Amex would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Amex Equities Rule 128 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 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Act, 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, 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. More specifically, the NYSE Amex believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule changes would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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,

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEAmex–2010–60). *See also* Securities Exchange Act Release No. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR–NYSEAmex–2010–116).

[5] Terms not defined herein are defined in NYSE Amex Equities Rule 128.

[6] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under NYSE Amex Equities Rule 80C, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEAmex–2011–23.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–24 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–2011–24. 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–NYSEAmex–2011–24 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8807 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64229; File No. SR–EDGX–2011–11]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.13 To Extend the Operation of a Pilot

April 7, 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 5, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 EDGX Rule 11.13 to extend the operation of a pilot pursuant to the Rule 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. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on December 10, 2010. Then, it was subsequently extended by the Exchange to April 11, 2011. The Exchange now proposes to extend the pilot program to extend 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.

On September 10, 2010, the Commission approved, on a pilot basis, changes to EDGX Rule 11.13 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[4] The pilot was subsequently extended to April 11, 2011.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a pilot basis.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[6] 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 Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 63515 (December 10, 2010), 75 FR 78319 (December 15, 2010) (SR–EDGX–2010–23).

[6] 15 U.S.C. 78f(b)(5).

markets concerning review of transactions as clearly erroneous.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4 (f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–EDGX–2011–11 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–2011–11. 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–EDGX–2011–11 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8806 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4 (f)(6)(iii). In addition, Rule 19b–4 (f)(6)(iii) requires that a self- regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64236; File No. SR–BYX–2011–006]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Pilot Program Related to Clearly Erroneous Execution Reviews

April 7, 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 1, 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 related to Rule 11.17, entitled "Clearly Erroneous Executions." 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on April 11, 2011. The Exchange proposes to extend the pilot program 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.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[4] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a pilot basis.

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.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] 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 Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–BYX–2011–006 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–2011–006. 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

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–006 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8848 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64226; File No. SR–FINRA–2011–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Promissory Note Proceedings

April 7, 2011.

I. Introduction

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to provide that FINRA will appoint a chair-qualified public arbitrator also qualified to resolve statutory discrimination cases. The proposed rule change was published for comment in the **Federal Register** on February 22, 2011.[3] The Commission did not receive any comments on the proposal. This order approves the proposed change.

II. Description of the Proposal

In 2009, FINRA implemented new procedures to expedite the administration of cases that solely involve a broker-dealer's claim that an associated person failed to pay money owed on a promissory note.[4] Under these procedures, FINRA appoints a single chair-qualified public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination qualified arbitrator)[5] to resolve the dispute.[6] These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law. At the time that FINRA filed the proposed rule change, these arbitrators were underutilized at the forum.

Since implementing the new procedures, FINRA has found that promissory note cases do not require extensive experience or depth of knowledge (or the limitation on representation of employers or of employees within the last five years). In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear.[7] Experience with the new procedures led FINRA to propose amending the Industry Code to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator. Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.[8]

In addition, the number of promissory note cases has more than doubled in the past two years. As a result of this substantial increase, it is becoming more difficult to appoint panels solely with statutory discrimination qualified arbitrators to these cases. Under the proposed rule change, the number of arbitrators available for appointment in promissory note cases would increase significantly. The proposed rule change would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

As explained in the Notice, 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 is consistent with the provisions of the Act noted above because it would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve promissory note cases.

III. Discussion of Comment Letters

The Commission did not receive any comment letters regarding the proposed rule change.

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] 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. More specifically, the Commission finds that the proposed rule change to allow chair-qualified arbitrators to hear promissory note cases would help to ensure that there are sufficient number of qualified arbitrators readily available to resolve such cases.

[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 and Exchange Act Release No. 63909 (February 15, 2011), 76 FR 9838 (February 22, 2011) ("Notice").

[4] *See* Securities Exchange Act Rel. No. 60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR–FINRA–2009–015). FINRA announced implementation of New Rule 13806 (Promissory Note Proceedings) in Regulatory Notice 09–48 (August 2009). The effective date was September 14, 2009.

[5] *See* Rule 13802(c)(3).

[6] Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination qualified arbitrator decides the case. If an associated person files a counterclaim or third party claim, FINRA bases panel composition on the amount of the counterclaim or third party claim. For counterclaims and third party claims that are not more than $100,000, FINRA appoints a single statutory discrimination qualified arbitrator. For counterclaims and third party claims of more than $100,000, FINRA appoints a three-arbitrator panel comprised of a statutory discrimination qualified arbitrator, a public arbitrator, and a non-public arbitrator.

[7] Of the first 175 promissory note cases completed, arbitrators decided the case on the pleadings 76 percent of the time (unless the case concluded by settlement or some other means).

[8] *See* Rule 12400(c).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b)(6).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2011–005), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8897 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64268; File No. SR–NASDAQ–2011–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Effective Hours of Rule 4753(c)

April 8, 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 7, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.

(c) For a pilot period ending six months after the date of Commission approval of SR–NASDAQ–2010–074, between 9:*45*[30] a.m. and *3:35*[4:00] p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Threshold range away from triggering price (percent)
$1.75 and under	15
Over $1.75 and up to $25	10
Over $25 and up to $50	5
Over $50	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and

(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A)–(D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(d) 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

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m. On March 11, 2011, the Commission approved Rule 4753(c) (the "Volatility Guard"), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ ("NASDAQ Securities"), as a six month pilot applied to the NASDAQ 100 Index securities.[3] The Volatility Guard automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time ("EST"). Volatility Guard is triggered automatically when the execution price of a pilot security moves more than a fixed amount away from a pre-established "triggering price" for that security. The triggering price for each pilot security is the price of any execution by the system in that security within the previous 30 seconds. For each pilot security, the system continually compares the price of each execution in the system against the prices of all system executions in that security over the 30 seconds. Once triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders. Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to NASDAQ's Halt Cross mechanism.[4]

NASDAQ is preparing to implement the Volatility Guard in the second quarter of 2011, and through these preparations NASDAQ identified a possible concern with the effective time

[12] 15 U.S.C. 78s(b)(2).

[13] 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. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR–NASDAQ–2010–074). Amendment 1 to SR–NASDAQ–2010–074 designated the NASDAQ 100 Index as the 100 pilot securities.

[4] The Nasdaq Halt Cross is "the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest." *See* Nasdaq Rule 4753(a)(3).

of the Volatility Guard. As currently proposed, the Volatility Guard could interfere with the effective hours of NASDAQ's opening and closing crosses should a Volatility Guard halt occur during a cross process. The NASDAQ opening and closing crosses are price discovery facilities that cross orders at a single price. The crosses enable market participants to execute on-open and on-close interest.[5] NASDAQ is proposing to change the effective time of the pilot to 9:45 a.m. until 3:35 p.m. EST to avoid potential interference with the crosses, and the orderly opening and closing of the market.

NASDAQ notes that the proposed effective time is identical to the effective time of the single-stock trading pause pilot adopted by multiple U.S. markets, including NASDAQ, (the "Circuit Breaker Pilot").[6] In approving the Circuit Breaker Pilot, the Commission noted that limiting the effective time of the pilot to 9:45 a.m. until 3:35 p.m. EST would ensure that existing procedures designed to facilitate orderly openings and closings would not be interfered with. As a consequence, NASDAQ believes that adopting the identical effective time as the Circuit Breaker Pilot will reasonably ensure that the orderly opening and closing of the markets is not interfered with by the Volatility Guard.

NASDAQ also believes that, as a complement to the Circuit Breaker Pilot, it is important that Volatility Guard's effective time mirror that of the Circuit Breaker Pilot. The Circuit Breaker Pilot applies to the securities of the S&P 500 Index, Russell 1000 Index and certain exchange-traded products. As such, there is certain overlap between the securities covered by the Circuit Breaker Pilot and Volatility Guard.[7] Such a consistent approach to the effective time will lessen the potential for investor confusion surrounding the timing and operation of the two processes. Accordingly, NASDAQ believes harmonizing the intra-day effective time of the Volatility Guard with that of the Circuit Breaker Pilot will better serve the goal of working seamlessly with the cross-market pause and will avoid potential interference with the orderly opening and closing of the markets.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Sections 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes that the proposed rule meets these requirements in that it promotes transparency and uniformity among the Circuit Breaker Pilot and the Volatility Guard. Further, the proposed changes will ensure that the opening and closing processes of the markets are not interfered with by the Volatility Guard.

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 Regarding the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASDAQ has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. This proposed rule change will reduce the effective time of the Volatility Guard as the current effective time of the Volatility Guard could interfere with the NASDAQ opening and closing processes. This proposed rule change will also make the effective time of the Volatility Guard consistent with the Circuit Breaker Pilot. Waiving the operative delay will ensure that the proposed change in the effective time of the Volatility Guard is both effective and operative by the date on which NASDAQ implements the Volatility Guard. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] The crosses generate opening and closing prices that are widely used by industry professionals including Russell Investments, Standard & Poor's and Dow Jones.

[6] On June 10, 2010, the Commission approved the Circuit Breaker Pilot, which instituted new circuit breaker rules that pause trading for five minutes in a security included in the S&P 500 Index if its price moves ten percent or more over a five-minute period. *See* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061, *et al.*). On September 10, 2010, the Circuit Breaker Pilot was expanded to include securities in the Russell 1000 Index and certain exchange-traded products. *See* Securities Exchange Act Release Nos. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033); 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079, *et al.*). The Circuit Breaker Pilot is scheduled to expire on April 11, 2011, however, the Exchanges are filing proposals with the Commission to extend the pilot to August 11, 2011. *See e.g.,* Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162).

[7] *See* Securities Exchange Act Release No. 62468 (July 7, 2010), 75 FR 41258 (July 15, 2010) (SR–NASDAQ–2010–074) (discussing how Volatility Guard operates in relation to the Circuit Breaker Pilot).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has met this requirement.

[13] *Id.*

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–051 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–2011–051. 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–2011–051 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy Ahn,

Deputy Secretary.

[FR Doc. 2011–8917 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64264; File No. SR–FINRA–2011–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Require Public Disclosure of Any Access or Post-Transaction Fees for Executions Against a Public Quotation in an OTC Equity Security

April 8, 2011.

On February 18, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require each member to disclose on its website any fees imposed against its published quotation in any OTC Equity Security, consistent with FINRA Rule 6450 (Restrictions on Access Fees). The proposed rule change was published for comment in the **Federal Register** on March 3, 2011.[3] The Commission received two comments on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 17, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. The extension of time will ensure that the Commission has sufficient time to consider and take action on FINRA's proposal in light of, among other things, the comments received on the proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[6] and for the reasons stated above, the Commission designates May 25, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR–FINRA–2011–008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8916 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64263; File No. SR–NASDAQ–2011–050]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify an Initial Listing Standard for the Nasdaq Global Select Market

April 8, 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 1, 2011, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[15] 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. 63960 (February 24, 2011), 76 FR 11829 ("Notice").

[4] *See* Letter from Daniel Zinn, General Counsel, OTC Markets Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated March 22, 2011 ("OTC Markets Letter") and letter from Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated April 6, 2011 ("STANY Letter").

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify an initial listing standard for the Nasdaq Global Select Market. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

5310. Definitions and Computations

(a)–(i) No change.

(j) In computing total assets and stockholders' equity for purposes of Rule 5315(f)(3)(D), Nasdaq will rely on a Company's most recent publicly reported financial statements subject to the adjustments described below:

(1) Application of Use of Proceeds—If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

(A) Pay off existing debt or other financial instruments: The adjustment will include elimination of the actual historical interest expense on debt or other financial instruments classified as liabilities under generally accepted accounting principles being retired with offering proceeds of all relevant periods or by conversion into common stock at the time of an initial public offering occurring in conjunction with the company's listing. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(B) Fund an acquisition:

(i) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3–05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S–X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and (ii) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquiror, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquiror. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(2) Acquisitions and Dispositions—In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 "Financial Statements of Business Acquired or to be Acquired" and Article 11 of Regulation S–X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants.

5315. Initial Listing Requirements for Primary Equity Securities

Rule 5310 provides guidance about computations made under this Rule 5315.

(a)—(e) No change.

(f)

(1)–(2) No change

(3) Valuation Requirement

A Company, other than a closed end management investment company, shall meet the requirements of sub-paragraph (A), (B), (C), or (D) below:

(A)–(C) No change.

(D) (i) Market capitalization of at least $160 million, (ii) total assets of at least $80 million [for the most recently completed fiscal year], and (iii) stockholders' equity of at least $55 million.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently adopted an initial listing standard for the Nasdaq Global Select Market that permits listing if the company has: (i) $80 million in total assets; (ii) $55 million in stockholders' equity; and (iii) $160 million of market capitalization.[5] Companies qualifying under this standard also have to meet all other requirements of Rule 5315, including the ownership and market value requirements contained in Rule 5315(f) and, upon listing, are subject to the Global Market continued listing standards.

Nasdaq based this listing standard on a listing standard adopted by the New York Stock Exchange ("NYSE"), though the numeric requirements of the Nasdaq standard are higher than those of the

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

[5] Securities Exchange Act Release No. 61904 (April 14, 2010), 75 FR 20651 (April 20, 2010) (SR–NASDAQ–2010–047).

NYSE.[6] However, unlike the NYSE requirement upon which the standard is based, Nasdaq required that the total assets portion of the requirement be met at the end of the prior fiscal year. As a result, companies are only able to demonstrate compliance with the total assets portion of this standard based on a single point in time each year—the year-end financials. To conform with NYSE's treatment under their comparable standard, Nasdaq proposes to delete the requirement in Rule 5315(f)(3)(D)(ii) that total assets be demonstrated as of the close of the most recent fiscal year. Nasdaq also proposes to add a definition in Rule 5310 explaining what adjustments will be made to total assets and stockholders' equity to reflect the use of proceeds and acquisitions and dispositions. These adjustments are identical to the adjustments specified in the NYSE Listed Company Manual.[7]

Nasdaq believes that the proposed amendment to Rule 5315(f)(3)(D) does not affect the status of Global Select Market-listed securities under Securities Exchange Act Rule 3a51–1(a) (the "Penny Stock Rule"),[8] as the amended standards satisfy the requirements of Exchange Act Rule 3a51–1(a)(2).[9] Rule 5315(f)(3)(D) requires stockholders' equity of at least $55 million, which exceeds the requirement in SEC Rule 3a51–1(a)(2)(i)(A)(1) of $5 million. Rule 5315(f)(3)(D) also requires a minimum market capitalization of $160 million. Nasdaq believes that this meets or exceeds the requirement of SEC Rule 3a51–1(a)(2)(i)(B) that a company have a market value of listed securities of at least $50 million, although these are not identical standards. Nasdaq believes that its Global Select Market's rules will also exceed the Penny Stock Rules remaining stock price and distribution requirements. Rule 5315(e)(1) requires companies initially listing on Nasdaq to have a minimum bid price of $4 per share, thereby satisfying the $4 requirement of SEC Rule 3a51–1(a)(2)(i)(C). Rule 5315(f)(1) requires a company's securities to have either 450 round lot holders or at least 2,200 total holders, although if a company is publicly traded and has an average monthly trading volume over the prior 12 months of at least 1.1 million shares per month, it can list with 550 total holders. Nasdaq believes that these requirements are comparable to, or more stringent than, the requirement of SEC Rule 3a51–1(a)(2)(i)(D) that a security have at least 300 round lot holders, and satisfy the same objective by assuring adequate liquidity in the security. Last, SEC Rule 3a51–1(a)(2)(i)(E) requires at least 1 million publicly held shares with a market value of at least $5 million. Rule 5315(e)(2) requires all securities listing on the Nasdaq Global Select Market to have at least 1.25 million publicly held shares and Rule 5215(f)(2) requires a minimum $45 million market value of publicly held shares. As such, Nasdaq believes its initial listing standards for the Global Select Market continue to meet or exceed the requirements of the Penny Stock Rules.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general and with Sections 6(b)(5) of the Act,[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 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 rule change is consistent with the investor protection objectives of the Act in that the proposed requirements modify and provide transparency to the calculation of total assets, but maintain the requirement at a level high enough so that only companies that are suitable for listing on the Global Select Market will qualify to list.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that companies may immediately take advantage of the proposed rule change. In support of the waiver, Nasdaq believes that its proposal is consistent with NYSE's rules, which were previously published for public comment, and raise no new issues.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that Nasdaq's proposed rule change is consistent with the NYSE's comparable listing standard in Section 102.01C(IV) of the NYSE's Listed Company Manual ("Assets and Equity Test") and applicable adjustments as set forth in Section 102.01C(I) of the NYSE's Listed Company Manual.[17] The Commission believes that Nasdaq's proposed rule

[6] Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (November 19, 2008) (SR–NYSE–2008–098, modifying Section 102.01C of the Listed Company Manual). The NYSE listing standard allows a company to list if it has total assets of at least $75 million, stockholders' equity of at least $50 million, and a global market capitalization of at least $150 million.

[7] *See* Section 102.01C(IV)(ii) of the Listed Company Manual noting that total assets and stockholders' equity are adjusted pursuant to Sections 102.01C(I)(3)(a) and (b).

[8] 17 CFR 240.a51–1(a).

[9] 17 CFR 240.a51–1(a)(2).

[10] Nasdaq notes that each of these requirements exceed the comparable requirements of the NYSE. *See* Securities Exchange Act Release No. 58934, *supra,* note 6.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give 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 Commission notes that the Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* notes 6 and 7.

change does not raise any issues that were not previously considered by the Commission in its approval of the NYSE's Assets and Equities Test and does not otherwise raise any new regulatory issues. The Commission also notes that the NYSE's proposal to adopt the Assets and Equity Test listing standard, with the applicable adjustments noted above, was subject to full notice and comment, and the Commission received no comments on the NYSE's rule proposal. For these reasons, the Commission designates, consistent with the protection of investors and the public interest, that the proposed rule change become operative immediately upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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 No. SR–NASDAQ–2011–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2011–050. 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–050 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8914 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64262; File No. SR–NASDAQ–2011–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform Rules 2360, 2361, 2370, 6951 to FINRA Rule Changes

April 8, 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 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is filing with the Securities Commission [sic] a proposal for NASDAQ to amend NASDAQ Rules 2360 (Approval Procedures for Day-Trading Accounts); 2361 (Day-Trading Risk Disclosure Statement); 2370 (Borrowing From or Lending to Customers); and 6951 (Definitions) to make non-substantive changes that reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA").

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is not making any substantive changes to the content of its rules. The purpose of this proposal is to update NASDAQ Rules 2360, 2361, 2370, and 6951 to reflect proper cross-references to corresponding FINRA rules.

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule

numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

In SR–FINRA–2009–059,[3] FINRA adopted, with minor changes, NASD Rules 2360 and 2361 regarding day trading into the FINRA consolidated rulebook as FINRA Rules 2130 and 2270, respectively. FINRA Rules 2130 and 2270, like former NASD Rules 2360 and 2361, define day-trading strategy and focus on members' obligations to disclose to non-institutional customers the basic risks of engaging in a day-trading strategy and to assess the appropriateness of day-trading strategies for such customers. FINRA Rule 2130 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. FINRA Rule 2270 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy. NASDAQ is, by this filing, updating the references in its Rules 2360 and 2361 from NASD Rules 2360 and 2361 to FINRA Rules 2130 and 2270.

NASDAQ is similarly updating the reference in its Rule 2370 from NASD Rule 2370 to FINRA Rule 3240. In SR–FINRA–2009–095,[4] FINRA adopted, with minor changes, NASD Rule 2370 regarding borrowing from or lending to customers into the FINRA consolidated rulebook as FINRA Rule 3240, and added record retention requirements. FINRA Rule 3240, like former NASD Rules 2370, focuses in general on the appropriateness of particular lending arrangements between FINRA member broker-dealers and their registered persons and customers (to the extent permitted by the member) and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

Additionally, in SR–FINRA–2009–005,[5] FINRA renumbered cross-references in its rules from NYSE Rule 80A to NYSE Rule 132B on the basis of a New York Stock Exchange ("NYSE" or NYSE Euronext") rule proposal.[6] In that proposal, NYSE rescinded its Rule 80A regarding index arbitration [sic] restrictions and repositioned the definitions of "index arbitrage" and "program trading" into NYSE Rule 132B. Because NASDAQ Rule 6951 refers in its definitions of index arbitrage and program trading to Rule 80A, NASDAQ is, by this filing, updating the references in its Rule 6951 from NYSE Rule 80A to 132B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(5) of the Act,[8] 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. The proposed changes will conform NASDAQ Rules 2360, 2361, 2370, and 6951 to recent changes made to several corresponding FINRA rules, to promote application of consistent regulatory standards.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(6)(iii) thereunder[10] 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–047 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–2011–047. This file number should be included on the subject line if e-mail is used.

[3] *See* Securities Exchange Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009) (SR–FINRA–2009–059) (notice of filing and immediate effectiveness). *See also* Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009) (SR–FINRA–2009–005) (notice of filing and immediate effectiveness regarding, among other things, updated rule cross-references and other non-substantive technical changes to FINRA Rules 2360 and 2370).

[4] *See* Securities Exchange Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010)(SR–FINRA–2009–095)(order approving, among other things, adoption of NASD Rule 2370 as FINRA Rule 3240).

[5] *See* Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009) (SR–FINRA–2009–005) (notice of filing and immediate effectiveness).

[6] *See* Securities Exchange Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007) (SR–NYSE–2007–96) (notice of filing and immediate effectiveness).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–047, and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8913 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64261; File No. SR–BX–2011–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 2360, 2361, 2370, and 6951 To Reflect Changes to Corresponding FINRA Rules

April 8, 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 1, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4 (f)(6) under the Act,[3] which renders the proposal 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Rules 2360 (Approval Procedures for Day-Trading Accounts); 2361 (Day-Trading Risk Disclosure Statement); 2370 (Borrowing From or Lending to Customers); and 6951 (Definitions) to make non-substantive changes that reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA").

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 is not making any substantive changes to the content of its rules. The purpose of this proposal is to update BX Rules 2360, 2361, 2370, and 6951 to reflect proper cross-references to corresponding FINRA rules.

BX based many of its rules on those of The NASDAQ Stock Market LLC ("NASDAQ"). Similarly, many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). As a consequence, many of BX's rules closely mirror those of FINRA. During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

In SR–FINRA–2009–059,[4] FINRA adopted, with minor changes, NASD Rules 2360 and 2361 regarding day trading into the FINRA consolidated rulebook as FINRA Rules 2130 and 2270, respectively. FINRA Rules 2130 and 2270, like former NASD Rules 2360 and 2361, define day-trading strategy and focus on members' obligations to disclose to non-institutional customers the basic risks of engaging in a day-trading strategy and to assess the appropriateness of day-trading strategies for such customers. FINRA Rule 2130 creates an obligation on members that promote a day-trading strategy regarding account-opening approval procedures for non-institutional customers. FINRA Rule 2270 creates an obligation on such members to disclose to non-institutional customers the unique risks of engaging in a day-trading strategy. BX is, by this filing, updating the references in its Rules 2360 and 2361 from NASD Rules 2360 and 2361 to FINRA Rules 2130 and 2270.

BX is similarly updating the reference in its Rule 2370 from NASD Rule 2370 to FINRA Rule 3240.[5] In SR–FINRA–2009–095,[6] FINRA adopted, with minor

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 .

[3] 17 CFR 240.19b–4 (f)(6).

[4] *See* Securities Exchange Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009)(SR–FINRA–2009–059)(notice of filing and immediate effectiveness). *See also* Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009)(SR–FINRA–2009–005)(notice of filing and immediate effectiveness regarding, among other things, updated rule cross-references and other non-substantive technical changes to FINRA Rules 2360 and 2370).

[5] BX is also deleting obsolete references in Rules 2360, 2361, and 2370 regarding FINRA being in the in the process of consolidating certain NASD rules into a new FINRA rulebook.

[6] *See* Securities Exchange Release No. 61537 (February 18, 2010), 75 FR 8772 (February 25, 2010)(SR–FINRA–2009–095)(order approving,

Continued

changes, NASD Rule 2370 regarding borrowing from or lending to customers into the FINRA consolidated rulebook as FINRA Rule 3240, and added record retention requirements. FINRA Rule 3240, like former NASD Rules 2370, focuses in general on the appropriateness of particular lending arrangements between FINRA member broker-dealers and their registered persons and customers (to the extent permitted by the member) and the potential for conflicts of interests between both the registered person and his or her customer and the registered person and the member with which he or she is associated.

Additionally, in SR–FINRA–2009–005,[7] FINRA renumbered cross-references in its rules from NYSE Rule 80A to NYSE Rule 132B on the basis of a New York Stock Exchange ("NYSE" or NYSE Euronext") rule proposal.[8] In that proposal, NYSE rescinded its Rule 80A regarding index arbitration [sic] restrictions and repositioned the definitions of "index arbitrage" and "program trading" into NYSE Rule 132B. Because BX Rule 6951 refers in its definitions of index arbitrage and program trading to Rule 80A, BX is, by this filing, updating the references in its Rule 6951 from NYSE Rule 80A to 132B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 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. The proposed changes will conform BX Rules 2360, 2361, 2370, and 6951 to recent changes made to several corresponding FINRA rules, to promote application of consistent regulatory standards.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[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–BX–2011–021 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–2011–021. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–021, and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8911 Filed 4–12–11; 8:45 am]

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among other things, adoption of NASD Rule 2370 as FINRA Rule 3240).

[7] *See* Securities Exchange Release No. 59432 (February 23, 2009), 74 FR 9121 (March 2, 2009)(SR–FINRA–2009–005)(notice of filing and immediate effectiveness).

[8] *See* Securities Exchange Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007)(SR–NYSE–2007–96)(notice of filing and immediate effectiveness).

[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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64253; File No. SR–EDGX–2011–09]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

April 7, 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 6, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 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 its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.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 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 reduce the rate on Flag T from $0.0020 per share to $0.0012 per share for routing using the ROUD/ROUE routing strategies, as defined in Rules 11.9(b)(3)(b) and 11.9(b)(3)(c)(i).

EDGX Exchange proposes to implement this amendment to the Exchange fee schedule on April 6, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed reduced rate for Flag T (routing using ROUD/ROUE routing strategies) of $0.0012 per share is an equitable allocation of reasonable dues, fees, and other charges. Lower fees are directly correlated with a higher number of intermediate low cost destinations as the more intermediate low cost destinations that there are, there is a greater potential for an execution at a lower cost destination before reaching a higher cost destination. For example, the ROUQ routing strategy, as defined in Rule 11.9(b)(3)(c)(iv),[6] routes to the lowest number of low cost destinations compared to the ROUD/ROUE [7] and ROUZ [8] routing strategies. As a result, the Exchange charges a higher fee for such strategy of $0.0020 per share (flag Q). The ROUD/ROUE routing strategies route to a medium number of low cost destinations and the ROUZ routing strategy routes to the highest number of low costs destinations amongst these routing strategies. As a result, the Exchange will assess a proposed fee of $0.0012 per share for the ROUD/ROUE routing strategies and assesses the lowest fee for the ROUZ routing strategy of $0.0010 per share. The more low cost destinations that an order routes to allows the Exchange to pass on the savings it receives from such destinations to its members in lower fees. Therefore, it is equitable that ROUQ has the highest fee of $0.0020 per share, while ROUD/ROUE has an intermediate fee of $0.0012 per share, and ROUZ has the lowest fee of the three strategies of $0.0010 per share. The Exchange also notes that a difference between ROUQ and ROUZ routing strategies is that the additional routing destinations in the ROUZ routing strategy are intermediate between the routing destinations in ROUQ. This also accounts for the differences in fees. Therefore, for each additional intermediate low cost destination that an order routes to, the prices of the strategies mentioned above (ROUQ, ROUD/ROUE, ROUZ) decrease accordingly.

The Exchange believes that the rate is reasonable when compared to other market centers using similar routing strategies. The comparable routing strategy to the ROUD/ROUE routing strategies is Parallel D or Parallel 2D with the DRT (Dark routing technique) option on BATS BZX Exchange ("BATS"). BATS charges $0.0020 per share for its DRT option. The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

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 proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] *See* SR–EDGX–2011–08 (April 1, 2011).

[7] The Exchange notes that ROUD/ROUE routing strategies route to the identical number of low cost destinations.

[8] *See* SR–EDGX–2011–08 (April 1, 2011). *See* Rule 11.9(b)(3)(c)(v).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–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–EDGX–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,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–09 and should be submitted on or before May 4, 2011.

[11] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8910 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64269; File No. SR–ISE–2011–21]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to API Fees

April 8, 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 6, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III 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 ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[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 ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. ISE currently charges its members a fee for each login that a Member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of "listening" to broadcast messages.[3] The Exchange currently has the following categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).[4] The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange market makers, i.e., Primary Market Makers and Competitive Market Makers, while order entry and listening are functionalities available only to non-market makers, i.e., Electronic Access Members.

ISE market makers currently receive an allocation of 1,300,000 quotes per day per user.[5] If a market maker submits more quotes than those allocated, *i.e.,* 1,300,000 quotes per day per user as measured on average in a single month, the market maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker across all bins (*i.e.,* group of options to which the market maker is appointed), is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1,300,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market makers are invoiced on a monthly basis for the greater of (a) the greatest number of users that logged into the system, or (b) the number of implied users based on quotes.

[3] *See* Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR–ISE–2006–09).

[4] *Id.*

[5] *See* Exchange Act Release No. 56721 (October 30, 2007), 72 FR 62502 (November 5, 2007) (SR–ISE–2007–91).

The Exchange also has an additional category of login known as a "High Throughput User."[6] A High Throughput User is a market maker who is allocated up to 2,600,000 quotes per day in a month.[7] A High Throughput User is able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes.[8]

ISE currently charges market makers $950 per month for each quoting session for up to 1,300,000 quotes per day, on average for a month. Market makers are charged an additional user fee of $950 for each incremental usage of up to 1,300,000 quotes per day per user. For High Throughput Users, ISE charges a fee of $1,900 per month. High Throughput Users are charged an additional user fee of $1,900 for each incremental usage of up to 2,600,000 quotes per day per user.

The Exchange is scheduled to launch an enhanced trading system called Optimise on April 11, 2011. In anticipation of the launch of the Optimise trading platform, the Exchange proposes to amend its API quote fees. Specifically, ISE proposes to increase the monthly fee and quote allowance for non-High Throughput Users to $1,200 and 1,800,000 quotes per day per user, respectively. Members that quote in excess of 1,800,000 quotes per day average in a month will be charged an additional login of $950 per month for each subsequent usage of 1,800,000 quotes per day in a month. For example, a market maker who uses four million quotes per day would be charged as follows: $1,200 for the initial session with an allowance of 1,800,000 quotes per day plus $1,900 for two additional quoting sessions, each with an allowance of 1,800,000 quotes per day.

For "High Throughput Users," ISE proposes to increase the monthly fee and quote allowance to $2,400 and 3,600,000 quotes per day, respectively. Members that quote in excess of 3,600,000 quotes per day in a month will be charged an additional login of $1,900 per month for each subsequent usage of 3,600,000 quotes per day in a month.

As the Exchange migrates from its current trading platform to Optimise, Members will undoubtedly be required to login to access both trading systems and thus could be charged for accessing both systems. The Exchange does not intend to charge members for logging in to both systems simultaneously. Members will be charged a single login fee regardless of whether they use their quote allocation for the current trading system or for the Optimise trading system instead of charging for quote allocation separately for each of the trading systems. Therefore, until the Exchange fully migrates to the Optimise trading system, ISE proposes to waive any API fees that are duplicative.

ISE represents that the proposed increase in the allocation of quotes per day per user will not have an adverse effect on capacity on the Exchange.

The Exchange has designated this proposal to be operative on April 11, 2011.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by assessing the same fees to all Members based on their quoting needs. The Exchange also believes that it is equitable to assess different access fees based on the type of logins as long as the same access fee is assessed to all Members that are similarly situated. The Exchange also believes that the proposal is reasonable because during the transition period to the Optimise trading platform the Exchange will waive any API fees that are duplicative to ensure Members are not burdened by having to pay fees to login in to both the current trading platform and the Optimise platform.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2011–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[6] *See* Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR–ISE–2007–36).

[7] *See supra* note 3.

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–21 and should be submitted by May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8923 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64274; File No. SR–NYSEAmex-2011–11]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending Rule 103B—NYSE Amex Equities To Modify the Application of the Exchange's Designated Market Maker Allocation Policy in the Event of a Merger Involving One or More Listed Companies

April 8, 2011.

On February 24, 2011, NYSE Amex LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 103B—NYSE Amex Equities to modify the application of the Exchange's Designated Market Maker allocation policy in the event of a merger involving one or more listed companies. The proposed rule change was published for comment in the **Federal Register** on March 10, 2011.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 24, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates June 8, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR–NYSEAmex-2011–11.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8922 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64270; File No. SR–ISE–2011–13]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee Cap and a Service Fee

April 8, 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 March 31, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III 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 ISE is proposing to establish a fee cap of $100,000 per month and a related service fee for member firms on all proprietary trading, with certain exclusions, in all ISE products. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to establish a monthly fee cap per ISE member organization, subject to certain exclusions, across all products traded on ISE. The proposed fee cap shall apply to transactions executed in a member's proprietary account. The cap also would apply to crossing transactions for the account of entities affiliated with a member. That is, the cap will apply to a member's crossing transactions even if the member executes crosses in the account of an affiliate, rather than the member's own account. This will provide members with the flexibility to effect transactions

[12] 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. 64040 (March 4, 2011), 76 FR 13249.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

where it makes the most business sense within their family of companies.

For example, a member engaged in trading activity on ISE may have an affiliate engaged in a market making capacity on another exchange, which may be a separate broker/dealer entity. A crossing transaction by that member in which a customer order is facilitated against the proprietary trading interest of the member's affiliate would be eligible for the proposed fee cap. On the other hand, a crossing transaction by the same member where a customer order is facilitated against the proprietary trading interest of an unaffiliated entity would not be eligible for the fee cap.[3]

Specifically, the Exchange proposes to cap proprietary transaction fees in all products traded on ISE, in the aggregate, at $100,000 per month per member, with certain exclusions which are noted below. All proprietary transactions, including non-ISE market maker contracts that are part of a crossing transaction, are eligible towards the proposed fee cap. Volume from regular and complex orders, as well as Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism and Qualified Contingent Cross ("QCC") orders,[4] will also count towards the fee cap.

In addition to adopting a fee cap, ISE proposes to adopt a service fee of $0.01 per side on all non-QCC transactions that are eligible for the fee cap. For QCC volume, the Exchange proposes to adopt a higher service fee of $0.05 per side, recognizing that this is a premium service that required substantial investment by the ISE to deliver to members. The proposed service fee shall apply once a member reaches the fee cap level and shall apply to every contract side included in and above the fee cap. A member who does not reach the monthly fee cap will not be charged the proposed service fee. Additionally, the proposed service fee is not calculated in reaching the fee cap. Once the fee cap is reached, the proposed service fee shall apply to both proprietary and other account designations[5] in all ISE products in addition to those transactions that were included in reaching the fee cap. The proposed service fee, when charged for volume above the cap when no other transaction fees are collected, is being instituted to defray the Exchange's costs of providing services to members, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

In calculating the proposed fee cap, the Exchange proposes to exclude the following:[6] (1) Any surcharge fee charged by the Exchange on licensed products,[7] (2) fees from Non-ISE Market Maker volume not related to an affiliated member's crossing activity, (3) the fee for responses to special orders[8] in all products, (4) the maker and taker fees charged by the Exchange for complex orders[9] for certain option classes,[10] and (5) the taker fees charged by the Exchange for regular orders[11] for the Select Symbols.

The proposed fee cap is functionally similar to a "Multiply-Listed Option Fee Cap" in place at the CBOE[12] and a "Firm Related Equity Option Cap" in place at NASDAQ OMX PHLX, Inc. ("PHLX").[13] The Exchange believes the proposed fee cap would create an incentive for members to continue to send order flow to the Exchange.

The Exchange has designated this proposal to be operative on April 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that adopting the fee cap is reasonable because it will potentially lower transaction fees for members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay regular transaction fees and thus will be able to lower their monthly fees.

The Exchange believes that the fee cap is not unfairly discriminatory because all members, including non-ISE market makers are eligible to reach the cap. Moreover, the transactional fees that apply to the cap are not focused on any particular type of trading or member. Indeed, the cap covers all types of proprietary business members conduct on the Exchange, including regular transactions, complex orders, as well as all "special" transactions, such as trades in the Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism, and Qualified Contingent Crosses. The Exchange is applying the fee cap only to firm proprietary business, and not customer or market maker business, because the Exchange is specifically targeting this type of business as a competitive response to similar fee caps other exchanges have adopted,[16] and thus to make it more attractive for members to send such business to the Exchange. The Exchange has adopted other incentive programs targeting other business areas: lower fees (or no fees) for customer orders;[17] and tiered

[3] Each member would be responsible for notifying the Exchange of its affiliations so that fees and contracts of the member and its affiliates involved in crossing transactions may be aggregated for purposes of the fee cap.

[4] The Commission recently approved the QCC order type. *See* Securities Exchange Act Release No. 63955 (February 24, 2011) (SR–ISE–2010–73). The Exchange filed a separate proposed rule change to adopt fees for QCC orders. *See* Securities Exchange Act Release No. 64112 (March 23, 2011) (SR–ISE–2011–14).

[5] Other account designations include Prop-firm (Member trading for its own account and clearing in the F range at OCC), Prop-cust (Member trading for its own account and clearing in the C range at OCC), BD-firm (Member trading on behalf of another registered broker/dealer clearing in the F range at OCC), BD-cust (Member trading on behalf of another registered broker/dealer clearing in the C range at OCC), FarMM (Member trading on behalf of another registered broker/dealer clearing in the M range at OCC).

[6] Other exchanges currently employ exclusions to their fee cap programs. For example, at the Chicago Board Options Exchange, Inc. ("CBOE"), Automated Improvement Mechanism ("AIM") execution fees do not count towards the fee cap employed by that exchange. *See* CBOE Fees Schedule, Section 1 (Equity Options Fees).

[7] The Exchange currently charges a surcharge that ranges between $0.02 per contract to $0.22 per contract on the following licensed products: BKX, MFX, MID, MSH, SML, UKX, RMN, RUI, RUT, MVR, NDX, MNX, FUM, HSX, POW, TNY, WMX and NXTQ.

[8] Special orders are order types that involve a crossing transaction or an auction, where a broadcast is transmitted to Exchange members for potential participation and/or price improvement.

[9] A Complex Order is defined in Exchange Rule 722(a)(1) as any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[10] The proposed exclusion applies to options classes that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols ("Select Symbols").

[11] An order means a commitment to buy or sell securities as defined in Exchange Rule 715.

[12] The CBOE fees are capped at $75,000. *See* CBOE Fees Schedule, Section 1 (Equity Options Fees).

[13] PHLX Firms are subject to a maximum fee of $75,000. *See* PHLX Fee Schedule, Section II (Equity Options Fees).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] *See supra* notes 12 and 13.

[17] For example, the customer fee is $0.00 per contract for products other than Second Market Options, Singly Listed Indexes, Singly Listed ETFs and FX Options. For Second Market Options, the customer fee is $0.05 per contract and for Singly Listed Options, Singly Listed ETFs and FX Options,

Continued

pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[18]

The Exchange further believes the proposal to adopt the fee cap is equitable because it would uniformly apply to all members engaged in proprietary trading in option classes traded on the Exchange. As noted, ISE market makers currently receive the benefit of a fee reduction under a sliding scale fee structure applicable to non-Select Symbols.

The Exchange believes that adopting the service fee is reasonable because it will also potentially lower transaction fees for members. Members who reach the fee cap during a month will pay the service fee instead of the regular transaction fees and thus will be able to lower their monthly fees. The Exchange believes that charging a service fee is also reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange also believes it is reasonable to charge a higher service fee for providing certain unique orders, such as QCC orders, recognizing the unique efforts and costs associated with developing that product. The Exchange believes the proposed fee change will attract additional order flow to the Exchange and thereby will benefit all market participants.

The Exchange believes the proposal to adopt the service fee is equitable and not unfairly discriminatory because it would uniformly apply to all members engaged in proprietary trading. The proposed fee is designed to give members who trade a lot on the Exchange a benefit by way of a lower transaction fee.

The Exchange believes the proposed service fee change will benefit market participants by potentially lowering their fees while allowing the Exchange to remain competitive with other exchanges that offer similar fee cap programs. The Exchange notes that the proposed service fee is similar to fees other exchanges charge for providing certain services to its members. For example, Phlx currently assesses a risk management fee.[19] Additionally, the CBOE has a matched-unmatched fee that it applies.[20] Both the Phlx and the CBOE fees are in essence fees charged by those exchanges for services they provide to their members.

For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2011–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–13. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–13 and should be submitted by May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Cathy Ahn,

Deputy Secretary.

[FR Doc. 2011–8921 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[18] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[19] *See* Phlx Fee Schedule, Section VI (Equity Options Fees).

[20] *See* CBOE Fees Schedule—Duplicate Fees Related To Manual Data Entry (Keypunch) Errors.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64273; File No. SR–NYSE–2011–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending Exchange Rule 103B To Modify the Application of the Exchange's Designated Market Maker Allocation Policy in the Event of a Merger Involving One or More Listed Companies

April 8, 2011.

On February 24, 2011, New York Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 103B to modify the application of the Exchange's Designated Market Maker allocation policy in the event of a merger involving one or more listed companies. The proposed rule change was published for comment in the **Federal Register** on March 10, 2011.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 24, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates June 8, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR–NYSE–2011–09.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8920 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64039 (March 4, 2011), 76 FR 13251.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64266; File No. SR–C2–2011–008]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow the Listing and Trading of a P.M.-Settled S&P 500 Index Option Product

April 8, 2011.

I. Introduction

On February 28, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change to permit the listing and trading of P.M.-settled S&P 500 Index options on C2. The proposed rule change was published for comment in the **Federal Register** on March 8, 2011.[3] The Commission received two comments on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 22, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal in light of, among other things, the comments received on the proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [6] and for the reasons stated above, the Commission designates June 6, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR–C2–2011–008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8918 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64011 (March 2, 2011), 76 FR 12775 ("Notice").

[4] *See* letter from Randall Mayne, Blue Capital Group, to Elizabeth M. Murphy, Secretary, Commission, dated March 18, 2011; letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated March 24, 2011.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64225; File No. SR–FINRA–2011–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating To Motions in Arbitration

April 7, 2011.

I. Introduction

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes, and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, "Codes"), to provide moving parties with a five-day period to reply to responses to motions. The proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change was published for comment in the **Federal Register** on February 22, 2011.[3] The Commission received three comment letters on the proposed rule change.[4] FINRA responded to these comments in a letter dated April 1, 2011.[5] This order approves the proposed rule change.

II. Description of Proposal

The Codes specify time periods for a party to respond to a motion,[6] including a motion to dismiss.[7] They do *not* expressly provide time periods for the party that made the original motion (the "moving party") to reply to a response, which happens on occasion. FINRA's practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA proposed to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA's practice relating to replies to responses to motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings. Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties' objections to motions. FINRA has not experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its website stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.[8] After the five-day period, FINRA forwards to the panel at the same time the motion, any response to the motion, and any reply. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

Based on FINRA's experience with the subpoena rules and its revised practice relating to replies to responses, FINRA does not expect the proposed five-day period to result in undue delays.

III. Discussion of Comment Letters

One commenter asked FINRA to consider amending the subpoena rules to provide for a five-day period to reply to responses to motions in order to maintain consistency in the Codes' timeframes.[9] FINRA stated that as it is not amending the subpoena rules in the proposed rule change, the Cornell Letter is outside the scope of the proposal. However, FINRA did express its intention to consider the suggestion made in the Cornell Letter for possible future rulemaking.[10]

One commenter raised a concern that the proposed five-day period may not provide *pro se* claimants with adequate time to prepare their replies.[11] FINRA responded that *pro se* claimants would have enough time to reply under the proposed rule change, noting that *pro se* claimants would already be aware of the issues raised in a response, having drafted the initial motion, and that if *pro se* claimants need additional time to reply to a response, the Director may extend the deadline for good cause pursuant to FINRA Rule 12207(c).[12] This commenter also suggested that *pro se* claimants receive additional guidance regarding their procedural rights, including those not expressly codified in a rule, such as the ability to file a sur-reply.[13] In response, FINRA indicated that sur-replies and additional guidance regarding sur-replies are outside the scope of the current rulemaking,[14] noting that it did not wish to encourage additional filings by addressing sur-replies in the Codes at this time.[15] Finally, the commenter asked that FINRA amend the rules to include express language limiting the scope of motion replies to those issues and facts previously raised in the motion and response.[16] FINRA responded that it does not intend to amend the proposal in response to this comment, as it believes that arbitrators are in the best position to determine the scope of motions and replies thereto and would address any such concerns directly with the parties.[17]

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[19] which, among other things, requires that FINRA rules 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. More specifically, the Commission finds that the proposed rule change codifies

[3] *See* Exchange Act Release No. 63910 (February 15, 2011), 76 FR 9840 (February 22, 2010) ("Notice").

[4] *See* letter from William A. Jacobson, Esq., Associate Clinical Professor and Director, Cornell Securities Law Clinic, and Negisa Balluku, Cornell Law School, dated March 15, 2011 ("Cornell Letter"); letter from Lisa A. Catalano, Esq., Director and Associate Professor of Clinical Legal Education, Christine Lazaro, Esq., Supervising Attorney, Clair S. Seu, Student Intern, and Stephen Chou, Student Intern, St. John's University School of Law Securities Arbitration Clinic, dated March 15, 2011 ("St. John's Letter"); and letter received by FINRA from David M. Foster, Esq. dated March 21, 2011, which addressed issues beyond the scope of the proposed rule change.

[5] *See* letter from Margo A. Hassan, Assistant Chief Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated April 1, 2011 ("FINRA Response").

[6] Rules 12503(b) and 13503(b) (Responding to Motions) provide, generally, that parties have 10 days from the receipt of a written motion to respond to the motion.

[7] Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

[8] *See http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652.*

[9] Cornell Letter.

[10] FINRA Response.

[11] St. John's Letter.

[12] FINRA Response.

[13] St. John's Letter.

[14] Telephone conversation with Margo Hassan of FINRA on April 6, 2011.

[15] FINRA Response.

[16] St. John's Letter.

[17] FINRA Response.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78*o*–3(b)(6).

existing practice and helps to promote a fair and efficient process for the resolution of claims.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FINRA–2011–006), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8896 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64260; File No. SR–FINRA–2011–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation date of FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability)

April 8, 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 7, 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 substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to delay the implementation date for FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability), as approved in SR–FINRA–2010–039, until July 9, 2012.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 17, 2010, the SEC approved FINRA's proposal to adopt rules governing know-your-customer and suitability obligations [4] for the consolidated FINRA rulebook.[5] On January 10, 2011, FINRA issued *Regulatory Notice* 11–02, which provided guidance regarding the new rules and announced an implementation date of October 7, 2011. Following SEC approval of the rules and publication of the *Regulatory Notice,* numerous firms requested that the approved rules' implementation date be delayed to allow firms additional time to determine the types of systems and procedural changes they need to make, implement those changes, and educate associated persons and supervisors regarding compliance with the rules. FINRA is filing this rule change to move the implementation date for Rules 2090 and 2111 from October 7, 2011, to July 9, 2012, and has filed it as a "non-controversial" rule change that is effective upon filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it will allow firms to better prepare procedures and systems and better educate associated persons to comply with the requirements of these important rules.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR–FINRA–2010–039).

[5] The current FINRA rulebook consists of (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from NYSE ("Incorporated NYSE rules") (together, the NASD Rules, and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD rules generally apply to all FINRA member firms, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA rules apply to all FINRA member, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). Among other things, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 Commission notes that FINRA has satisfied the pre-filing notice requirement.

designate a shorter time if such action is consistent with the protection of investors and the public interest. Because FINRA is delaying the implementation of Rules 2090 and 2111 only, FINRA requests that the Commission waive the 30-day operative delay so that this proposed rule change may become operative upon filing.

SR–FINRA–2010–039 would amend and convert existing NYSE and NASD know your customer and suitability rules into the consolidated FINRA rulebook [11] and, to the extent implementation of SR–FINRA–2010–039 is postponed, FINRA members remain subject to those existing NYSE and NASD know-your-customer and suitability obligations. Further, the delay in the implementation date will allow firms additional time to better prepare procedures and systems and better educate associated persons and supervisors to comply with the requirements of new FINRA Rules 2090 and 2111. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–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.

All submissions should refer to File Number SR–FINRA–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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–016 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8873 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] The current FINRA rulebook consists of (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from NYSE ("Incorporated NYSE rules") (together, the NASD Rules, and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD rules generally apply to all FINRA member firms, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[12] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64259; File No. SR–NASDAQ–2010–134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Time Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Adopt Additional Criteria for Listing Commodity Stockpiling Companies That Have Indicated That Their Business Plan Is To Buy and Hold Commodities

April 8, 2011.

On October 15, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional criteria for listing commodity stockpiling companies ("CSCs") that have indicated that their business plan is to buy and hold commodities. The proposed rule change was published for comment in the **Federal Register** on November 3, 2010.[3] The Commission received no comments on the proposal. The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to February 1, 2011.[4] The Commission received one comment letter on the proposal.[5] On January 31, 2011, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule change.[6]

Section 19(b)(2) of the Act [7] provides that not later than 180 days after the date of publication of notice of the filing of a proposed rule change, the Commission shall issue an order approving or disapproving the proposed rule change. Section 19(b)(2) of the Act [8] further provides that the Commission may extend the period for issuance of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63207 (October 28, 2010), 75 FR 67788.

[4] *See* Securities Exchange Act Release No. 63508 (December 9, 2010), 75 FR 78300 (December 15, 2010).

[5] *See* Letter from Edward H. Smith, Jr. to Florence E. Harmon, Deputy Secretary, Commission, dated January 18, 2011.

[6] *See* Securities Exchange Act Release No. 63804 (January 31, 2011), 76 FR 6506 (February 4, 2011).

[7] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

the order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination, or the self-regulatory organization that filed the proposed rule change consents to the longer period.

The Commission is extending the 180-day time period for the issuance of an order approving or disapproving the proposed rule change for an additional 60 days.[9] The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that the Commission has sufficient time to consider the Exchange's proposal and whether it is consistent with the Act. The proposal would establish, for the first time, standards for listing securities of companies whose business plan is to buy and hold commodities.

Accordingly, pursuant to Section 19(b)(2) of the Act,[10] the Commission designates July 1, 2011 as the date by which the Commission shall issue an order either approving or disapproving the proposed rule change (File Number SR–NASDAQ–2010–134).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8872 Filed 4–12–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64246; File No. SR–NASDAQ–2011–048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

April 7, 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 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on April 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of quotes/orders through the NASDAQ Market Center of securities priced at $1 or more. Under the pricing schedule, NASDAQ offers a credit to liquidity providers, with the size of the credit varying based on a range of parameters specified in the fee schedule. The lowest liquidity provider rebate is $0.0020 per share executed for displayed quotes/orders and $0.0010 per share executed for non-displayed quotes/orders. One means by which members may currently receive a higher liquidity rebate is focused on the use of non-displayed quotes/orders: members providing 3 million shares or more of liquidity through one or more MPID using non-displayed quotes/orders receive a rebate of $0.0015 per share executed, rather than the basic rebate of $0.0010 per share executed, with respect to those quotes/orders.[3] Effective April 1, 2011, NASDAQ will eliminate this rebate provision. As NASDAQ noted when it introduced this rebate provision in January 2011,[4] NASDAQ believes that transparent markets should be encouraged wherever possible, but NASDAQ does offer members the option of providing liquidity through non-displayed quotes/orders in order to allow it to compete better with alternative trading systems that operate as dark pools. Accordingly, it was NASDAQ's expectation that the rebate tier might encourage some members that use dark pools extensively to make greater use of non-displayed liquidity on NASDAQ. Because such a response did not occur, NASDAQ has decided to eliminate the tier. NASDAQ notes that the tier's elimination will not impact any members, because there are no members that currently qualify for the tier that do not also qualify for the same rebate for non-displayed quotes/orders (and a higher rebate for displayed quotes/orders) under another volume-based pricing tier.

Second, NASDAQ is introducing a new rebate tier for members that are active in both the NASDAQ Market Center and the NASDAQ Options Market. Currently, a member is eligible to receive an enhanced rebate of $0.0029 per share executed for displayed quotes/orders and of $0.0015 per share executed for non-displayed quotes/orders if it achieves certain specified levels of activity in both markets. The required levels of monthly activity are an average daily volume of more than 10 million shares of liquidity provided through the NASDAQ Market Center and an average daily volume of more than 130,000 options contracts accessed or provided through the NASDAQ Options Market. In each case, the member may achieve the required volume levels through one or more of its market participant identifiers ("MPIDs"). While retaining this tier,[5] NASDAQ is proposing to add an additional tier for a market participant with (i) shares of liquidity provided through the NASDAQ Market Center in all securities during the month equal to 1% or more of the average total consolidated volume reported to all consolidated transaction

[9] The proposed rule change was published for notice and comment in the **Federal Register** on November 3, 2010. *See supra* note 2. The 180th date from publication in the **Federal Register** is May 2, 2011 and an additional 60-days from that date would extend the time period to July 1, 2011.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rebate for displayed quotes/orders for such members is the basic rate of $0.0020 per share executed, unless the member otherwise qualifies for a more favorable rebate with respect to its displayed quotes/orders.

[4] Securities Exchange Act Release No. 63648 (January 5, 2011), 76 FR 2178 (January 12, 2011) (SR–NASDAQ–2011–003).

[5] NASDAQ is, however, modifying the wording of the existing tier in Rule 7018 to improve its clarity. The changes do not result in any substantive changes to the applicability of the tier.

reporting plans by all exchanges and trade reporting facilities during the month, and (ii) an average daily volume during the month of more than 300,000 contracts of liquidity accessed or provided through the Nasdaq Options Market. In each case, the member may achieve the required volume levels through one or more of its MPIDs. A member reaching these volume levels would receive a liquidity provider rebate of $0.00295 per share executed for displayed liquidity, and $0.0015 per share executed for non-displayed liquidity. These rebate levels are equal to the rebate levels currently available to members that provide high levels of liquidity through the NASDAQ Market Center but that do not trade options contracts in volume through the NASDAQ Options Market.[6]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms. With respect to the elimination of the favorable rebate tier for non-displayed quotes/orders, NASDAQ believes that the change is equitable in that there are no members that currently qualify for the tier that do not also qualify for the same rebate for non-displayed quotes/orders (and a higher rebate for displayed quotes/orders) under another volume-based pricing tier; accordingly, its elimination will not impact the fees paid by any members. Moreover, NASDAQ believes that its liquidity provider rebates continue to be set at reasonable levels. Depending on their levels of liquidity provision using displayed and/or non-displayed quotes/orders, members are eligible to receive a rebate of $0.0015 per share executed for non-displayed quotes/orders, as well as rebates for displayed quotes/orders that are higher than the base rate of $0.0020 per share executed.

With respect to its pricing change for members active on both the NASDAQ Market Center and the NASDAQ Options Market, NASDAQ has noted in its prior filings with regard to the existing rebate tier focused on such members that the tier is responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy.[9] NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center.

Because the rebates available through the new tier are equal to the highest rebates otherwise available to market participants, members seeking to qualify for the new tier are required to maintain fairly high levels of activity on the NASDAQ Market Center and the NASDAQ Options Market. NASDAQ notes, however, that the new tier is not the only means of qualifying for the rebate levels associated with the new tier, and that the other means do not require any activity on the NASDAQ Options Market. Specifically, any member that provides the levels of liquidity on the NASDAQ Market Center required under the new tier would already qualify for the same rebate ($0.00295 per share for displayed liquidity and $0.0015 per share for non-displayed liquidity) under existing tiers focused solely on volume of liquidity provision, as long as the liquidity was provided through a single MPID. Under the new tier, however, a member that could not reach the NASDAQ Stock Market volume levels required to earn the highest rebate through a single MPID could be eligible for the same rebate level if it was able to attain high volume levels on the NASDAQ Stock Market through multiple MPIDs and also achieved required levels of activity through the NASDAQ Options Market. Accordingly, NASDAQ believes that the new tier is not unreasonably discriminatory, because NASDAQ already provides alternative means to achieve the same rebate level without use of the NASDAQ Options Market. NASDAQ also believes that the new tier is reasonable and equitable because it will provide members with an alternative method to earn the highest rebate, thereby potentially resulting in reduced fees for a wider range of market participants.

NASDAQ further notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that are exempted from compliance with the statutory standards applicable to exchanges. In the case of the fee changes effected by this filing, (i) the elimination of the enhanced rebate for non-displayed liquidity will impact no members, since those members that qualify for the tier also currently qualify to receive the same rebate for non-displayed quotes/orders (and a higher rebate for displayed quotes/orders) through other pricing tiers, and (ii) the new options tier will widen opportunities for market participants to earn the highest rebate and thereby reduce their fees.

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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.

[6] Specifically, a member qualifies for the same rebate if it has an average daily volume through the NASDAQ Market Center in all securities during the month of: (i) More than 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month; (ii) more than 85 million shares of liquidity provided, if average total consolidated volume is between 9,000,000,001 and 10 billion shares per day during the month; (iii) more than 75 million shares of liquidity provided, if average total consolidated volume is between 8,000,000,001 and 9 billion shares per day during the month; and (iv) more than 65 million shares of liquidity provided, if average total consolidated volume is 8 billion or fewer shares per day during the month. In each case, however, the member is required to achieve the required level through a single MPID.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR–NASDAQ–2011–028); Securities Exchange Act Release No. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR–NASDAQ–2009–041).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–048 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–2011–048. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–048, and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8871 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64242; File No. SR–NSX–2011–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend Pilot Program Regarding Clearly Erroneous Executions

April 7, 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 6, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend its rules to extend a certain pilot program regarding clearly erroneous executions.

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.

[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 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 extend the pilot program currently in effect regarding clearly erroneous executions under NSX Rule 11.19. Currently, unless otherwise extended or approved permanently, this pilot program will expire on April 11, 2011. The instant rule filing proposes to extend the pilot program until the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Securities as defined in Commentary .05 of Rule 11.20.

NSX Rule 11.19 (Clearly Erroneous Executions) was approved by the Securities and Exchange Commission (the "Commission") on September 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. During the pilot period, the Exchange, in conjunction with the Commission and other markets, has continued to assess the effectiveness of the pilot program. The Exchange, in consultation with other markets and the Commission, has determined that the duration of this pilot program should be extended until August 11, 2011 or to coincide, if applicable, with the earlier implementation date of the limit up/limit down mechanism. Accordingly,

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NSX–2010–07).

[4] *See* Securities Exchange Act Release No. 63484 (December 9, 2010), 75 FR 78330 (December 15, 2010) (SR–NSX–2010–16).

pursuant to the instant rule filing, the expiration date of the pilot program referenced in the first two sentences of Rule 11.19 is proposed to be changed from "April 11, 2011" to the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism, if adopted, applies to the Circuit Breaker Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to clearly erroneous executions.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4 (f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–NSX–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–NSX–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 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–NSX–2011–05 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8865 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64258; File No. SR–ISE–2011–23]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the $2.50 Strike Price Program

April 8, 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 6, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has 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 ISE Rule 504 to expand the $2.50 Strike Price program. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to expand the current $2.50 Strike Price Program ("Program") [5] to permit the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $100, provided the $2.50 strike price intervals are no more than $10 from the closing price of the underlying stock in the primary market.[6] Additionally, ISE proposes to specify that it may select up to sixty (60) option classes on individual stocks for which the intervals of strike prices will be $2.50. Currently, ISE Rule 504(g) permits the listing of options with $2.50 strike price intervals with strike prices between $50 and $75. Specifically, ISE proposes to amend the current text of ISE Rule 504(g) to expand the Program.

For example, consider a hypothetical where Caterpillar, Inc. ("CAT") was trading at $81. With approximately one month remaining until expiration, and with a front month at-the-money put option (the 80 strike) trading at approximately $1.30, the investor would be able to purchase a $77.50 strike put at an estimated $0.60 per contract. Today, the next available strike of a one month put option is the 75 strike. While the 75 strike put would certainly trade at a lesser price than the 80 strike put,[7] the protection offered would only take effect with a 7.40% decline in the market as oppose to a 4.30% decline in the market. The $77.50 strike put would provide the investor an additional choice to hedge exposure (the opportunity to hedge with a reduced outlay) and thereby minimize risk if there were a decline in the stock price of CAT.

Another example would be if an investor desired to sell call options to hedge the exposure of an underlying stock position and enhance yield. Consider a hypothetical where CAT was trading at $81 and the second month (two months remaining) of a recently out of-the-money call option (the 85 strike) was trading at approximately $2.35. If the investor were to sell the 85 strike call against an existing stock position, the investor could yield a return of approximately 2.90% over a two month period or an annualized return of 17.4%. By providing an additional $2.50 strike interval above $75, the investor would have the opportunity to sell the 82.50 strike instead of the 85 strike. If the 85 strike call were trading at $2.35, the 82.50 strike call would trade at approximately $3.30. By selling the 82.50 strike call at $3.30 against an existing stock position, the investor could yield a 4.07% return over a two month period or an annualized 24.40% return. Therefore, an additional choice of a $2.50 strike interval could afford varying yields to the investor.

ISE believes that the Program has to date created additional trading opportunities for investors, thereby benefiting the marketplace. The existence of $2.50 strike prices with strike intervals above $75 affords investors the ability to more closely tailor investment strategies to the precise movement of the underlying security and meet their investment, trading and risk management requirements.

ISE is also proposing to specify that it may select up to 60 option classes on individual stocks for which the intervals of strike prices will be $2.50. ISE has participated in the industry wide $2.50 Strike Price Program since ISE's inception in 2000. Currently, the options exchanges may collectively select up to 200 options classes on individual stocks for which the intervals of strike prices will be $2.50. In addition, each options exchange is permitted to list options with $2.50 strike price intervals on any option class that another options exchange selects under its program.

The industry wide collection of 200 options classes has not been expanded since 1998, although increasingly more companies have completed initial public offerings from 1998 through 2010. Additionally, significantly more options classes are trading in 2011 as compared to 1998. The Exchange proposes to specify that ISE may select up to 60 options classes to remain competitive with other exchanges and to offer investors additional investment choices. ISE believes that offering additional options classes would benefit investors.

Furthermore, ISE does not believe that this proposal would have a negative impact on the marketplace. ISE would compare this proposal with the $1 Strike Price expansion, wherein ISE, among several options exchanges, expanded its $1 Strike Price Program from 55 individual stocks to 150 individual stocks on which an option series may be listed at $1 strike price

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The $2.50 Strike Price Program existed among the options exchanges when ISE began operations in 2000. Initially adopted in 1995 as a pilot program, the pilot $2.50 Strike Price Program allowed options exchanges to list options with $2.50 strike price intervals for options trading at strike prices greater than $25 but less than $50 on a total of up to 100 option classes. *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12). In 1998, the pilot program was permanently approved and expanded to allow the options exchanges to select up to 200 option classes for the $2.50 Strike Price Program. *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26). The Exchange lists options with $2.50 strike price intervals on those classes selected by the other options exchanges and does not select any class for inclusion in the $2.50 Strike Price Program. *See* Securities Exchange Act Release No. 52960 (December 15, 2005), 70 FR 76090 (December 22, 2005) (SR–ISE–2005–59).

[6] The term "primary market" is defined in ISE Rule 100(a)(37) as the principal market in which an underlying security is traded.

[7] The 75 strike put would trade at $0.30 in this example.

intervals.[8] ISE believes that this proposed rule change that would, in part, result in an increase to the 200 options classes in the industry wide Program, is less than the $1 Strike Price Program increase among several exchanges and therefore would have less impact than that program, which has not had any negative impact on the market in terms of proliferation of quote volume or fragmentation. ISE believes that the effect of the proposed expansion on the marketplace would not result in a material proliferation of quote volume or concerns with fragmentation.

With regard to the impact of this proposal on system capacity, ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary system capacity to handle the potential additional traffic associated with the listing and trading of additional classes on individual stocks in the $2.50 Strike Price Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] 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. ISE believes that the effect of the proposed expansion on the marketplace would not result in a material proliferation of quote volume or concerns with fragmentation. In addition, ISE believes that it has the necessary system capacity to handle the potential additional traffic associated with listing and trading of the additional classes.

Rather, ISE believes the $2.50 Strike Price Program proposal would provide the investing public and other market participants increased opportunities to better manage their risk exposure. Accordingly, ISE believes that the proposal to expand the Program to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $100 should further benefit investors and the market by providing greater trading opportunities for those underlying stocks that have low volatility and thus trade in a narrow range. While expansion of the $2.50 Strike Price Program will generate additional quote traffic, ISE does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, ISE does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and ISE does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4 (f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2011–23 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–2011–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also

[8] *See* Exchange Act Release No. 62442 (July 2, 2010), 75 FR 39597 (July 9, 2010) (SR–ISE–2010–64).

[9] 15 U.S.C. 78f(b).

[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 the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[13] *See* Securities Exchange Act Release No. 64157 (March 31, 2011), 76 FR 18817 (April 5, 2011) (SR–Phlx–2011–15) (order approving expansion of $2.50 Strike Price Program).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2011–23 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8856 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64254; File No. SR–NYSE–2011–16]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 80C, Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date 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

April 7, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 6, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011, 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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011,[4] 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.

Rule 80C requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a "Trading Pause." The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all S&P 500 Index securities, Russell 1000 Index securities, and specified exchange-traded products.[5]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, extension 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 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

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

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4 .

[4] *See* Securities Exchange Act Release No. 63500 (December 9, 2010), 75 FR 78309 (December 15, 2010) (SR–NYSE–2010–81).

[5] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *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). *See also* 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).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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

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 for 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[8] and Rule 19b–4 (f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–16 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–2011–16. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–2011–16, and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8855 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4 (f)(6). When filing a proposed rule change pursuant to Rule 19b–4 (f)(6) under the Act, an exchange is required to give 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 Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64250; File No. SR–EDGX–2011–08]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGX Rule 11.9 To Introduce Additional Routing Options to the Rule

April 7, 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 1, 2011, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 11.9 to introduce additional routing options to the rule. 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, on the Commission's Web site at *http://www.sec.gov,* 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's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend Rule 11.9(b)(3) to add two new additional strategies.

In Rule 11.9(b)(3), the Exchange describes that its system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The new System routing options are described in more detail below.

The Exchange proposes to describe the ROUQ routing strategy and add it to Rule 11.9(b)(3)(c)(iv). ROUQ is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

The Exchange proposes to describe the ROUZ routing strategy and add it to Rule 11.9(b)(3)(c)(v). ROUZ is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

The differences between the latter two strategies lies in the differences in the System routing tables for the ROUQ/ROUZ strategies. The ROUQ routing strategy goes to fewer low cost destinations than does the ROUZ routing strategy.

The Exchange also proposes to move the existing descriptions of ROUE, ROUT, and ROUX into Rule 11.9(b)(3)(c)(i)–(iii), respectively. Formerly, the descriptions were in Rules 11.9(b)(3)(c) for ROUE, 11.9(b)(3)(h) for ROUT, and 11.9(b)(3)(i) for ROUX.

The Exchange proposes to make conforming changes to the rest of the rule to re-letter the sections accordingly.

The Exchange believes that the proposed introduction of these routing options, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] 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 change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)(iii) thereunder.[5]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[6] However, Rule 19b–4(f)(6)[7] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange users new routing strategies, and the inability to immediately offer the new routing strategies would put the Exchange at a competitive disadvantage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available to Exchange users. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2011–08 on the subject line.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *Id.*

[8] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–08. 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–EDGX–2011–08 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8850 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64230; File No. SR–EDGA–2011–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13 To Extend the Operation of a Pilot

April 7, 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 5, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") 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 EDGA Rule 11.13 to extend the operation of a pilot pursuant to the Rule 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. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on December 10, 2010. Then, it was subsequently extended by the Exchange to April 11, 2011. The Exchange now proposes to extend the pilot program to extend 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.

On September 10, 2010, the Commission approved, on a pilot basis, changes to EDGA Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[4] The pilot was subsequently extended to April 11, 2011.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a pilot basis.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] 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 Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 63517 (December 10, 2010), 75 FR 78318 (December 15, 2010) (SR–EDGA–2010–24).

[6] 15 U.S.C. 78f(b)(5).

markets concerning review of transactions as clearly erroneous.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–EDGA–2011–12 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–2011–12. 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–EDGA–2011–12 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8805 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64243; File No. SR–CBOE–2011–038]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Close of Trading Hours for Expiring End of Week and End of Month Expirations

April 7, 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 6, 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 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 the Substance of the Proposed Rule Change

CBOE proposes to amend Rule 24.9 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring End-of-Week and End-of Month Expirations. 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's Public Reference Room.

[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).

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 24.9 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring End-of-Week Expirations and End-of-Month Expirations. On September 14, 2010, the Securities and Exchange Commission ("Commission") approved the implementation of a pilot program that permits P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month ("End-of-Week Expirations" or "EOWs") and (b) the last trading day of the month ("End-of-Month Expirations" or "EOMs").[5]

EOWs and EOMs are treated the same as traditional options on the same underlying index that expire on the Saturday following the third Friday of the month; provided, however, that EOWs and EOMs are P.M.-settled.[6] EOWs and EOMs are subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for EOWs and EOMs are similar to regular index options, with one general exception: The exercise settlement value is based on the index value derived from the closing prices of component stocks.[7]

Generally, EOWs and EOMs are priced in the market based on corresponding futures values. On the last day of trading, the closing prices of the component stocks (which are used to derive the exercise settlement value) are known at 3 p.m. (Chicago time) (or soon after) when the equity markets close. Despite the fact that the exercise settlement value is fixed at or soon after 3 p.m. (Chicago time), trading in expiring EOWs and EOMs continues, however, for an additional fifteen minutes until 3:15 p.m. (Chicago time) and are not priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring EOW and EOM series continue to move and be priced in response to changes in corresponding futures prices.

Because of the potential pricing divergence that could occur between 3:00 and 3:15 pm on the final trading day in expiring EOWs and EOMs (*e.g.,* switch from pricing off of futures to cash), the Exchange believes that, in order to mitigate potential investor confusion, it is appropriate to cease trading in expiring EOWs and EOMs at 3 p.m. on the last day of trading. The proposed change to the close of trading hours will apply to all outstanding expiring EOW and EOM Expirations listed on or before the effective date of this proposal and to all EOWs and EOMs listed thereafter under the EOW/EOM Pilot Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Preventing continued trading on a product after the exercise settlement value has been fixed eliminates potential confusion and thereby protects investors and the public interest.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[11] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2011–038 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

[5] *See* Securities Exchange Act Release No. 34–62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075).

[6] *See* CBOE Rule 24.9(e).

[7] *See* supra note 5.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

20549–1090. All submissions should refer to File No. SR–CBOE–2011–038. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–038 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8804 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64249; File No. SR–Phlx–2011–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Establish a Qualified Contingent Cross Order

April 7, 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 1, 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 PHLX Rule 1080 to establish a Qualified Contingent Cross Order ("QCC Order") for execution in the PHLX XL II System ("System" or "Exchange System"). The 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 below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

NASDAQ OMX PHLX Rules

* * * * *

Rule 1080. PHLX XL and XL II

(a)–(n) No Change.

(o) Qualified Contingent Cross Order.

A Qualified Contingent Cross Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order to buy or sell an equal number of contracts.

(1) Qualified Contingent Cross Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO.

(a) Qualified Contingent Cross Orders will be automatically rejected if they cannot be executed.

(b) Qualified Contingent Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 1034.

(2) Qualified Contingent Cross Orders shall only be submitted electronically from off the Floor to the PHLX System. Order Entry Firms must maintain books and records demonstrating that each Qualified Contingent Cross Order was routed to the Exchange System from off of the Floor. Any Qualified Contingent Cross Order that does not have a corresponding record required by this subsection shall be deemed to have been entered from on the Floor in violation of this Rule.

(3) A "qualified contingent trade" is a transaction consisting of two or more component orders, executed as agent or principal, where:

(a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act;

(b) All components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent;

(c) The execution of one component is contingent upon the execution of all other components at or near the same time;

(d) The specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed;

(e) The component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and

(f) The transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

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.

[14] 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).

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").[4] 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.[5]

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.[6]

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).[7]

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.[8]

In keeping with that precedent, PHLX hereby proposes to add PHLX Rule 1080(o) to establish a QCC Order based on the precedent of ISE's QCC Order. Specifically, PHLX proposes to amend Rule 1080 to provide that a PHLX Order Entry Firm effectuating a trade via the System pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) ("QCT Exemption") can cross the options leg of the trade on PHLX as a QCC Order immediately upon entry and without order exposure if no Customer Orders[9] exist on the Exchange's order book at the same price.

As set forth in proposed Rule 1080(o), the QCC Order must: (i) Be for at least 1,000 contracts, (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.[10] As a result, the PHLX QCC Order proposed herein satisfies all of the requirements the Commission enumerated in the Approval Order.

Under this proposal, the Exchange would only permit QCCs to be submitted electronically from off the Floor through the Exchange System. In this regard, a Floor Broker located on the Floor of the Exchange would not be allowed to enter QCCs into the System, or otherwise effect them in open outcry. We plan to file a separate proposed rule change to address effecting QCCs in open outcry on the Floor of the Exchange.[11]

To provide a mechanism for the Exchange to review for whether QCC Orders have been entered from off of the Floor, the Exchange proposes to adopt proposed Rule 1080(o)(2). This provision would require members to maintain books and records demonstrating that each Qualified Contingent Cross Order was routed to the Exchange System from off of the Floor. Any Qualified Contingent Cross Order that does not have a corresponding record required by this provision would be deemed to have been entered from on the Floor in violation of Rule 1080(o).

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[12] in general, and furthers the objectives of Section 6(b)(5)[13] and 6(b)(8)[14]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

[4] The Commission notes that the order approving the ISE QCC Proposal was published in the **Federal Register** on March 2, 2011. *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 ("Approval Order").

[5] *See* Letter, dated August 13, 2010, from Thomas Wittman, President, NASDAQ OMX PHLX to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission.

[6] Approval Order at p. 28 (citing to Reg NMS QCT Exemption).

[7] *Id.* at p. 18.

[8] The Exchange has filed its proposed rule change pursuant to Rule 19b–4(f)(6). The Commission notes that it has previously provided guidance regarding the appropriate analysis for when a self-regulatory organization may submit a proposed rule change under Rule 19b–4(f)(6) for immediate effectiveness. *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 (July 11, 2008).

[9] 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 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.

[10] While the 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.

[11] It is PHLX's position that the Approval Order contemplates the submission of QCC Orders from the Floor of the Exchange. Nothing in this filing should be construed as being inconsistent with that position.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

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,[15] 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.

The statutory basis for PHLX's proposed 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 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 Modified 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 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–47 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–2011–47. 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–2011–47 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8803 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78k–1(a)(1)(C).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). 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.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64244; File No. SR–Phlx-2011–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC To Expand the Number of Components in the PHLX Gold/Silver Sector℠ Known as XAU℠, on Which Options Are Listed and Traded

April 7, 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 March 31, 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.

[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 filing with the Commission a proposal to expand the number of components in the PHLX Gold/Silver Sector℠ (the "Index" or "XAU℠"), on which options are listed and traded, and the Index weighting methodology.[3] No other changes are made to the Index or the options thereon.

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

The purpose of the proposal is to expand to thirty the number of components in the PHLX Gold/Silver Sector℠ or XAU℠, on which options are listed and traded, and change the Index weighting methodology to modified capitalization-weighted.[4] No other changes are made to the Index or the options thereon.

XAU℠ options subsequent to this proposal will be identical to XAU℠ options that are currently listed and trading except for the number of components in the underlying Index; and will trade pursuant to similar contract specifications (updated regarding components and weighting methodology).[5] The only post-proposal difference in XAU℠ options is that they will overlay an Index with thirty components where the current Index has sixteen components, and the Index will be modified capitalization-weighted where the current Index is capitalization-weighted.

Background

The Gold/Silver Index is a P.M. settled capitalization-weighted index composed of the stocks of widely held U.S. listed companies involved in the gold/silver mining industry. Options on the Index have an American style expiration and the settlement value is based on the closing values of the component stocks on the day exercised, or on the last trading day prior to expiration.[6]

In 1983 XAU℠ options were approved for listing and trading on the Exchange as the first options on a narrow-based index;[7] XAU℠ options have been listed and have traded continuously on the Exchange since December 19, 1983.

In 1994, the Exchange established initial listing standards in Rule 1009A(b) and (d) for options on indexes that were designed to allow the Exchange to initially list and trade options on narrow-based indexes[8] and broad based indexes[9] pursuant to generic listing standards (the "Index Options Listing Standards").[10] In the 1994 generic index options filing, the Exchange also established generic continued listing standards in Rule 1009A(c) for narrow-based and broad-based index options, which apply to index options once they are listed pursuant to generic listing standards (the "Index Options Maintenance Standards").[11] Because the Index is P.M. settled, it does not meet the A.M. settlement requirement of the Index Options Listing Standards.[12] However, the index meets all of the applicable Index Options Maintenance Standards.

In 1996, the Exchange received approval to apply to the Index all the Index Options Maintenance Standards of Rule 1009A(c) except the requirement that an index option be designated as A.M. settled per subsection (b)(1).[13] Subsection (c) also requires, among other things, that the Index comply with the concentration requirements specifically set forth in 1009A(b)(6) regarding the Gold/Silver Index.[14] The

[3] PHLX Gold/Silver Sector℠ may also be known as Gold/Silver Index.

[4] The Exchange notes that changing the weighting of the Index from capitalization-weighting to modified capitalization-weighting does not by itself require a rule filing proposal because both weighting methodologies are acceptable per the current generic index listing standards found in Rule 1009A(b)(2). The weighting change is included in this proposal only in conjunction with increasing the number of Index components by more than the amount indicated in Rule 1009A(c)(2), which requires a rule filing proposal.

[5] The contract specifications for XAU℠ options are available at *https://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspecs.*

[6] While the settlement value of a P.M. settled index such as XAU℠ is based on closing prices of the component securities, the settlement value of A.M. settled securities is based on opening prices.

[7] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (order approving listing and trading options overlying the Gold/Silver Index and the Gaming/Hotel Index).

[8] A narrow-based index or industry index is defined as: An index designed to be representative of a particular industry or a group of related industries. The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country. Rule 1000A(b)(12).

Currently, in addition to Gold/Silver Index, other narrow-based sector indexes on which options are listed and traded on the Exchange include: KBW Bank Index℠ (BKX℠); PHLX Housing Sector℠ (HGX℠); PHLX Utility Sector℠ (UTY℠); SIG Energy MLP Index℠ (SVO™); SIG Oil Exploration & Production Index™ (EPX℠); PHLX Semiconductor Sector℠ (SOX℠); PHLX Oil Service Sector℠ (OSX℠); and NASDAQ Internet Index℠ (QNET℠).

[9] A broad-based index or market index is defined as: An index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries. Rule 1000A(b)(11).

[10] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062–01 (June 10, 1994) (order approving File Nos. SR–Amex-92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–Phlx-94–10) (the "generic index options filing").

[11] The generic listing standards in Rule 1009A pursuant to Rule 19b–4(e) of the Act, *see* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), are similar to those of other options exchanges such as, for example, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; and The NASDAQ Stock Market LLC.

[12] Rule 1009A(b)(1) requires A.M. settlement.

[13] *See* Securities Exchange Act Release No. 37334 (June 19, 1996), 61 FR 33162 (June 26, 1996) (SR–Phlx–96–03) (order approving use of modified Rule 1009A(c) generic maintenance standards in respect of options on the Index).

The maintenance provisions in subsection (c) of Rule 1009A state, in part, as applicable to XAU℠: (1) The conditions stated in subparagraphs (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12), must continue to be satisfied, provided that the conditions stated in subparagraph (b)(6) must be satisfied only as to the first day of January and July in each year; (2) The total number of component securities in the index may not increase or decrease by more than 33 ⅓% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities; (3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; (4) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

[14] *Id.* Regarding concentration requirements, subsection (b)(6)(i) states that with respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the

Index meets all of the subsection (c) Index Options Maintenance Standards (the A.M. settlement requirement is not applicable to the Index) for continued trading of options overlying the Index, with one exception as noted below.

The Gold/Silver Index composed of sixteen companies continues to be a prime index that provides exposure to the dynamic gold/silver sector. When investors want information and investment opportunities specific to the gold/silver sector they most often turn to the Index and the XAU℠ options traded thereon.[15] The Index has served as a leading market indicator and XAU℠ options as a viable trading and investing vehicle in respect of the gold/silver sector.[16] Recognizing the market-leading aspects of the Index, the Exchange is proposing a rule change to increase to thirty the number of components in XAU℠ [17] so that this narrow-based index may even more effectively represent this market sector.

The Exchange submits that in the proposed expanded form the Index would continue to meet the relevant Index Options Maintenance Standards in subsection (c) of Rule 1009A for listing XAU℠ options. Specifically, all the applicable index maintenance requirements in subsection (c) applicable to options on narrow-based indexes would be met with one exception. The singular exception is the number of components. In particular, subsection (c)(2) of Rule 1009 indicates that the total number of component securities in the index may not increase or decrease by more than 33⅓% from the total number of securities in the index at the time of its initial listing; adding components to equal thirty is outside the (c)(2) parameter, and is the reason why the Exchange is making the current filing.

Index Design and Index Composition

Currently, the Index is calculated using a capitalization-weighted index methodology. The value of the Index equals the aggregate value of the Index share weights, also known as the Index Shares, of each of the Index Securities (components) multiplied by each such security's Last Sale Price, and divided by the divisor of the Index. The divisor serves the purpose of scaling such aggregate index value to a lower order of magnitude which is more desirable for reporting purposes. If trading in an Index Security is halted on its primary listing market, the most recent Last Sale Price for that security is used for all index computations until trading on such market resumes. Likewise, the most recent Last Sale Price is used if trading in a security is halted on its primary listing market before the market is open.

The modified capitalization-weighted methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, NASDAQ OMX, which maintains the Index, rebalances the Index quarterly and adjusts the weighting of Index components.

Index eligibility is limited to specific security types only. The security types eligible for the Index include common stocks, ordinary shares, ADRs, shares of beneficial interest or limited partnership interests and tracking stocks. Security types not included in the Index are closed-end funds, convertible debentures, exchange traded funds, preferred stocks, rights, warrants, units and other derivative securities.

As of December 31, 2010, the following were characteristics of the Index using a modified capitalization-weighting methodology:

—The total weighted capitalization of all components of the Index was $354.60 billion;

—Regarding component capitalization, (a) the highest weighted capitalization of a component was $56.55 billion (Freeport-McMoRan Copper & Gold Inc.), (b) the lowest weighted capitalization of a component was $0.44 billion (Endeavour Silver Corp.), (c) the mean capitalization of the components was $11.82 billion, and
(d) the median capitalization of the components was $5.11 billion;

—Regarding component price per share, (a) the highest price per share of a component was $120.09 (Freeport-McMoRan Copper & Gold Inc.), (b) the lowest price per share of a component was $6.94 (North American Palladium Ltd.), (c) the mean price per share of the components was $33.39, and (d) the median price per share of the components was $24.62;

—Regarding component weightings, (a) the highest weighting of a component was 8% (Freeport-McMoRan Copper & Gold Inc., Barrick Gold Corporation, Southern Copper Corporation, Goldcorp Inc., Newmont Mining Corporation), (b) the lowest weighting of a component was 0.27% (Endeavour Silver Corp.), (c) the mean weighting of the components was 3.33%, (d) the median weighting of the components was 3.06%, and (e) the total weighting of the top five highest weighted components was 40% (Freeport-McMoRan Copper & Gold Inc., Barrick Gold Corporation, Southern Copper Corporation, Goldcorp Inc., Newmont Mining Corporation);

—Regarding component shares, (a) the most available shares of a component was 1.13 billion shares (Kinross Gold Corporation), (b) the least available shares of a component was 0.05 billion shares (Royal Gold, Inc.), (c) the mean available shares of the components was 0.33 billion shares, and (d) the median available shares of the components was 0.19 billion shares;

—Regarding the six-month average daily volumes ("ADVs") of the components, (a) the highest six-month ADV of a component was 11.00 million shares (Freeport-McMoRan Copper & Gold, Inc.), (b) the lowest six-month ADV of a component was 0.52 million shares (Royal Gold, Inc.), (c) the mean six-month ADV of the components was 3.53 million shares, (d) the median six-month ADVs of the components was 2.20 million shares, (e) the average of six-month ADVs of the five most heavily traded components was 8.99 million shares (Freeport-McMoRan Copper & Gold Inc., Hecla Mining Company, Barrick Gold Corporation, Yamana Gold, Inc., Silver Wheaton Corp.), and (f) 100% of the components had a six-month ADV of at least 200,000; and

—Regarding option eligibility, (a) 100% of the components were options eligible, as measured by weighting, and (b) 100% of the components were options eligible, as measured by number.

Index Calculation and Index Maintenance

The Index is maintained by NASDAQ OMX and index levels are calculated continuously, using the Last Sale Price for each component stock in the Index. Index values are publicly disseminated at least every fifteen seconds throughout the trading day through a major market data vendor, namely NASDAQ OMX's index dissemination service. The Exchange expects that such dissemination will continue through

Index and the three highest weighted components shall not account for more than 65% of the weight of the Index; and that if the Index fails to meet this requirement, the Exchange shall reduce position limits to 8000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

[15] Another currently available investment product that evaluates the gold sector (only) is the AMEX Gold BUGS Index.

[16] During 2010, XAU℠ options traded an average of 55,432 contracts per month and traded as much as 13,581 contracts in a day (January 5, 2010). As of December 31, 2010, there were 3,787 contracts of open interest in XAU℠ options.

[17] A listing of the component securities in XAU℠ is available at *https://indexes.nasdaqomx.com/weighting.aspx?IndexSymbol=XAU&menuIndex=0.*

one or more (NASDAQ OMX-owned or unrelated) major market data vendors.[18]

Appurtenant to review of the Index for purposes of rebalancing, component securities are evaluated by NASDAQ OMX. In the event that an Index Security no longer meets the Continued Security Eligibility Criteria, it will be replaced with a security that is not currently in the Index that meets all of the Initial Security Eligibility Criteria and additional criteria which follows. Securities eligible for inclusion will be ranked ascending by market value, current price and percentage price change over the previous six months. The security with the highest overall ranking will be added to the Index provided that the Index then meets the following criteria: No single Index Security is greater than 25% of the weight of the Index and the top 3 Index Securities are not greater than 55% of the weight of the Index; no more than 15% of the weight of the Index is composed of non-U.S. component securities that are not subject to comprehensive surveillance agreements.[19] In the event that the highest-ranking security does not permit the Index to meet the above criteria, the next highest-ranking security will be selected and the Index criteria will again be applied to determine eligibility. The process will continue until a qualifying replacement security is selected.[20] Component changes will be publicly announced.

In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.[21]

The Exchange represents that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated at least every fifteen seconds by a widely available source, the Exchange will promptly notify the Division of Trading and Markets of the Commission, and the Exchange will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The contract specifications for the proposed expanded Index options (updated regarding components and weighting methodology) are, as previously noted, identical to the current narrow-based Index options that are currently listed and traded on the Exchange.[22] Options on the Index are American style and P.M. cash-settled. The Exchange's trading hours for index options (9:30 a.m. to 4 p.m. ET), will apply to options on XAU^{SM}.[23] Exchange rules that are applicable to the trading of options on indexes will continue to apply to the trading of options on XAU^{SM}.[24]

The strike price intervals for XAU^{SM} options contracts will remain the same as those currently in use: $2.50 or greater if the strike price is less than $200.[25] The minimum increment size for series trading below $3 will remain $0.05, and for series trading at or above $3 will remain $0.10.[26] The Exchange's margin rules will be applicable.[27] The Exchange will continue to list options on XAU^{SM} in up to three months from the March, June, September, December cycle plus two additional near-term months (that is, as many as five months at all times).[28] The trading of XAU^{SM} options will continue to be subject to the same rules that govern the trading of all of the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's current XAU^{SM} options and other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994. ISG members generally work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.[29]

The Exchange represents that it has the necessary systems capacity to continue to support listing and trading XAU^{SM} options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(5) of the Act[31] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposal to expand the XAU^{SM} index will allow the Exchange to seamlessly continue listing this premiere index and options thereon in a manner that even more effectively reflects the gold/silver sector.

[18] Rule 1009A(b)(12) states that should an underlying index be maintained by a broker-dealer, however, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer will have to erect a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

[19] *See* Rule 1009A(c), which refers to subsections (b)(6) and (b)(9).

[20] Moreover, changes in the price and/or Index Shares driven by corporate events such as stock dividends, stock splits, and certain spin-offs and rights issuances will be adjusted on the ex-date. If the change in total shares outstanding arising from other corporate actions is greater than or equal to 10.0%, the change will be made as soon as practicable. Otherwise, if the change in total shares outstanding is less than 10%, then all such changes are accumulated and made effective at one time on a quarterly basis after the close of trading on the third Friday in each of March, June, September, and December.

In the case of a special cash dividend, a determination will be made on an individual basis whether to make a change to the price of an Index Security in accordance with its Index dividend policy. If it is determined that a change will be made, it will become effective on the ex-date and advance notification will be made.

Ordinarily, whenever there is a change in Index Shares, a change in an Index Security, or a change to the price of an Index Security due to spin-offs, rights issuances, or special cash dividends, the divisor is adjusted to ensure that there is no discontinuity in the value of the Index, which might otherwise be caused by any such change. All changes are announced in advance and will be reflected in the Index prior to market open on the Index effective date.

[21] 15 U.S.C. 78s(b)(2).

[22] *See* supra note 5.

[23] *See* Rule 101.

[24] For trading rules applicable to trading index options, *see* Rules 1000A *et seq.* For trading rules applicable to trading options generally, *see* Rules 1000 *et seq.*

[25] *See* Rule 1101A(a). Rule 1101A generally indicates that strike price intervals for index options may be $5.00, $2.50 and $1.00.

[26] *See* Rule 1034(a). However, the rule indicates that certain products (*e.g.* IWM options and Alpha Index options) may trade at $0.01 minimum increments.

[27] *See* Rule 721 *et seq.*

[28] *See* Rule 1101A(b).

[29] A list of the current members and affiliate members of ISG can be found at *http://www.isgportal.org/isgportal/public/members.htm.*

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–2011–46 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–2011–46. 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–2011–46 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8802 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64247; File No. SR–OCC–2011–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Legal Certainty for the Trading of Futures on the CBOE Gold ETF Volatility Index

April 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 25, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will provide legal certainty for the trading of futures on the CBOE Gold ETF Volatility Index ("GVZ Index").

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.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to make clear that OCC will clear futures on the GVZ Index as security futures. OCC is proposing to add an interpretation to Article XII, Section 1 of OCC's By-Laws.

The GVZ Index is described by the CBOE Futures Exchange, LLC ("CFE") as an up-to-the-minute market estimate of the expected volatility of SPDR Gold Shares ("GLD") calculated by using real-time bid/ask quotes of Chicago Board Options Exchange, Incorporated listed GLD options.[5] CFE states that the GVZ Index uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

In its capacity as a "derivatives clearing organization" registered as such with the Commodity Futures Trading Commission ("CFTC"), OCC is concurrently submitting this rule filing to the CFTC pursuant to the self-certification procedures of CFTC Regulation 40.6.

OCC believes that the proposed rule change and interpretation of OCC's By-Laws is consistent with the requirements of Section 17A of the Act[6]

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] Securities Exchange Act Release No. 34–64152 (March 30, 2011).

[6] 15 U.S.C. 78q–1.

and the rules and regulations thereunder applicable to OCC because it is designed to promote the prompt and accurate clearance and settlement of transactions in security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by clarifying the jurisdiction under, and capacity in which, OCC clears futures on the GVZ Index. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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–OCC–2011–04 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–2011–04. 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 filings also will 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_04.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–2011–04 and should be submitted on or before May 4, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8801 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64238; File No. SR–NASDAQ–2011–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

April 7, 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 March 31, 2011, The NASDAQ Stock Market 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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now 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.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period 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* [April 11, 2011]. If the pilot is not either extended or approved permanent by *the*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies [April 11, 2011], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) 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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of 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, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. 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.[4]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that a four month extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. The Exchange notes, however, that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. Under such a mechanism, trades in a security outside a price band would not be allowed, thus eliminating clearly erroneous transactions from occurring altogether. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing 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.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[5] 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)[6] 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 transparency and uniformity across markets concerning decisions to break erroneous trades.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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:

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[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63489; (December 9, 2010), 75 FR 78281 (December 15, 2010).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–043 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–2011–043. 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–2011–043 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8800 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64237; File No. SR–FINRA–2011–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period of Amendments to FINRA Rule 11892 Governing Clearly Erroneous Transactions

April 7, 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 March 30, 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. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the pilot, which is currently scheduled to expire on April 11, 2011 until the earlier of August 11, 2011 or the date on which a limit up/down mechanism to address extraordinary market volatility, if adopted, applies to the pilot securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 11892.02 to extend the effective date of the amendments set forth in File No. SR–FINRA–2010–032 (the "pilot"), which are currently scheduled to expire on April 11, 2011, until the earlier of August 11, 2011 or the date on which a limit up/down mechanism to address extraordinary market volatility, if adopted, applies to the pilot securities.

The pilot was drafted in consultation with other self-regulatory organizations ("SROs") and Commission staff to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect for transactions otherwise than on an exchange. FINRA also implemented additional changes to the Rule as part of the pilot that reduce the ability of FINRA to deviate from the objective standards set forth in the Rule.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA and the other SROs further assess whether the pilot should be adopted permanently or whether other initiatives should be adopted in lieu of the current pilot.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that the pilot can continue to operate without interruption for the benefit of the marketplace and the investing public.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[5] 15 U.S.C. 78*o*–3(b)(6).

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 is consistent with the clearly erroneous rules of other SROs and will promote the goal of transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts. Further, FINRA believes that the proposed changes enhance the objectivity of decisions made by FINRA with respect to clearly erroneous executions.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7] FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[8] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–FINRA–2011–014 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–2011–014. 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–2011–014 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8799 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64201, File No. SR–MSRB–2011–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change To Amend the MSRB Short-Term Obligation Rate Transparency (SHORT) Subscription Service

April 6, 2011.

I. Introduction

On February 10, 2011, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the MSRB's Short-term Obligation Rate Transparency subscription service to provide subscribers with additional information as well as documents. The proposed rule change was published for comment in the **Federal Register** on March 2, 2011.[3] The Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Short-term Obligation Rate Transparency ("SHORT") System is a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63950 (February 23, 2011), 76 FR 11547 (the "Commission's Notice").

facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Rule G–34(c), on variable rate security market information, currently requires certain dealers to report to the SHORT System interest rates and descriptive information about Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). All reported information is disseminated from the SHORT System to subscribers pursuant to the MSRB SHORT subscription service [4] and is posted to the MSRB's Electronic Municipal Market Access ("EMMA") Web portal pursuant to the EMMA short-term obligation rate transparency service.

On August 20, 2010, the Commission approved changes to Rule G–34(c) that will increase the information dealers are required to report to the SHORT System. This rule change will add to the SHORT System documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VDROs, information about orders submitted for an ARS auction, and additional information about VRDOs.[5] To provide subscribers with access to these additional items of information and documents, the proposed rule change would amend the SHORT subscription service to include the additional information and documents as well as an ARS "bid to cover" ratio that would be computed by the SHORT System. A more complete description of the proposal is contained in the Commission's Notice.

The MSRB has requested an effective date for the proposed rule change of May 16, 2011.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB [6] and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act [7] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The Commission believes that the proposed rule change is consistent with the Exchange Act in that the amendments to the SHORT subscription service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make the additional information and documents collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions. Broad access to the information and documents collected by the SHORT System, in addition to the public access through the EMMA Web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about Auction Rate Securities and Variable Rate Demand Obligations.

The Commission further believes that broader re-dissemination and third-party use of the information and documents collected by the SHORT System should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto).

The proposed rule change will become effective on May 16, 2011, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–MSRB–2011–04), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8798 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[4] The SHORT subscription service became effective September 30, 2010. *See* Securities Exchange Act Release No. 34–62993, September 24, 2010 (File No. SR–MSRB–2010–06).

[5] *See* Securities Exchange Act Release No. 62755, August 20, 2010 (File No. SR–MSRB–2010–02).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64245; File No. SR–CBOE–2011–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Trade Options on Individual Stock Based Volatility Indexes and Certain Exchange-Traded Fund Based Volatility Indexes

April 7, 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 March 29, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to list and trade options on individual stock based volatility indexes and certain exchange-traded fund based volatility indexes. CBOE will list a total of 40 combined individual stock and exchange-traded fund based volatility indexes. These are in addition to options on the CBOE Gold ETF Volatility Index ("GVZ"), which has already been approved for trading by the Commission. Such volatility index options must be based on an individual stock option or exchange-traded fund option that already trades on CBOE. The proposed options will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on individual stock-based volatility indexes and select exchange-traded fund based volatility indexes (collectively, "Vol Indexes"). CBOE proposes to list a total of 40 combined Vol Indexes. Initially, CBOE proposes to list options on Vol Indexes comprised of options on the following individual stocks: Apple Computer, Amazon, IBM, Google, and Goldman Sachs. In addition, CBOE will list Vol Indexes comprised of options on the following exchange-traded funds ("ETFs"): The US Oil Fund, LP ("USO"), the iShares MSCI Emerging Markets Index Fund ("EEM"), the iShares FTSE China 25 Index Fund ("FXI"), the iShares MSCI Brazil Index Fund ("EWZ"), the Market Vectors Gold Miners ETF ("GDX"), and the Energy Select Sector SPDR ETF ("XLE"). These are in addition to options on the CBOE Gold ETF Volatility Index ("GVZ"), which has already been approved for trading by the Commission.[3] From time to time, CBOE will announce the remaining Vol Indexes options it will trade.

In addition to GVZ, CBOE currently has approval to trade options on other volatility indexes that measure the volatility of broad-based indexes.[4] The Exchange now wants to add volatility index options based on individual stock options that are very actively traded and on certain ETF options. This proposal would permit the Exchange to trade a Vol Index using any ETF option currently trading and eligible for options trading under Interpretations and Policies .06 and .07 to Rule 5.3 other than those ETFs specifically identified in Interpretation and Policy .06(iv). CBOE will continue to trade GVZ options under the prior approval issued by the Commission. The calculation of any Vol Index will use the same methodology, as described below, as is currently used for CBOE Volatility Index ("VIX") and GVZ options.

Index Design and Calculation

The calculation of a Vol Index will be based on the VIX and GVZ methodology applied to options on the individual stock or exchange-traded fund that is the subject of the particular Vol Index. A Vol Index is an up-to-the-minute market estimate of the expected volatility of the underlying individual stock or exchange-traded fund calculated by using real-time bid/ask quotes of CBOE listed options on the underlying instruments. A Vol Index uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.[5]

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.[6]

CBOE will compute values for Vol Index underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (Chicago time) (or until 3:15 p.m. (Chicago time) as applicable for certain Exchange-Traded Fund Based Volatility Index options). Vol Index levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

Options Trading

Vol Index options will be quoted in index points and fractions and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10).00). Initially, the Exchange will list in-, at- and out-of-the-money strike prices and the procedures for adding additional series are provided in Rule 5.5.[7] Dollar strikes (or greater) will be permitted for Vol Index options where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.

Transactions in Vol Index options may be effected on the Exchange between the hours of 8:30 a.m. Chicago time and 3:15 p.m. (Chicago time), except (for Exchange-Trade Fund Based Volatility Index options) if the closing time for traditional options on the exchange-traded fund is earlier than 3:15 p.m. (Chicago time), the earlier closing time shall apply. The Exchange is proposing to permit different closing times for Exchange-Traded Fund Based Volatility Index options because the trading hours for traditional options on ETFs vary.

Exercise and Settlement

The proposed options will typically expire on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index). If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be 30 days prior to the CBOE business day immediately preceding that Friday. For example, November 2011 Vol Index options would expire on Wednesday, November 16, 2011, exactly 30 days prior to the third Friday of the calendar month immediately following the expiring month.

Trading in the expiring contract month will normally cease at 3:00 pm (Chicago time) (or at 3:15 p.m. (Chicago

[3] *See* Securities Exchange Act Release No. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010) (order approving proposal to list and trade GVZ options on the CBOE).

[4] *See* Rule 24.9(a)(4) which identifies, *inter alia,* CBOE Volatility Index, CBOE Nasdaq 100 Volatility Index, CBOE Dow Jones Industrial Average Volatility Index and CBOE Russell 2000 Volatility Index as A.M.-settled index options eligible for options trading on CBOE.

[5] *See* proposed new definitions of "Exchange-Traded Fund and Individual Stock Based Volatility Index" set forth in Rule 24.1(bb).

[6] CBOE will be the reporting authority for any Vol Index.

[7] *See* Rule 5.5(c). "Additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying * * * moves substantially from the initial exercise price or prices." For purposes of this rule, "market price" shall mean the implied forward level based on any corresponding futures price or the calculated forward value of the respective Vol index.

time) as applicable for Exchange-Traded Fund Based Volatility Index options) on the business day immediately preceding the expiration date.[8] Exercise will result in delivery of cash on the business day following expiration. Vol Index options will be A.M.-settled.[9] The exercise settlement value will be determined by a Special Opening Quotations ("SOQ") of a Vol Index calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there are is no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.[10]

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position and Exercise Limits

For regular options trading, the Exchange is proposing to establish position limits for Vol Index options at 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month. CBOE believes that a 50,000 contract position limit is appropriate due to the fact that the options which are the underlying components for a Vol Index are among the most actively traded option classes currently listed. In determining compliance with these proposed position limits, Vol Index options will not be aggregated with the underlying exchange-traded fund or individual stock options. Exercise limits will be the equivalent to the proposed position limits.[11] Vol Index options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange.

For FLEX options trading, the Exchange is proposing that the position limits for FLEX Vol Index Options will be equal to the position limits for Non-FLEX Options on the same Vol Index. Similarly, the Exchange is proposing that the exercise limits for FLEX Vol Index Options will be equivalent to the position limits established pursuant to Rule 24.4. The proposed position and exercise limits for FLEX Vol Index Options are consistent with the treatment of position and exercise limits for Flex GVZ and other Flex Index Options. The Exchange is also proposing to amend subparagraph (4) to Rules 24A.7(d) and 24B.7(d) to provide that as long as the options positions remain open, positions in FLEX Vol Index Options that expire on the same day as Non-FLEX Vol Index Options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX Vol Index Options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A and 24.4B, and the exercise limits set forth in Rules 4.12 and 24.5.

The Exchange is proposing to establish a Vol Index Hedge Exemption, which would be in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. The Exchange proposes to establish the following procedures and criteria which must be satisfied to qualify for a Vol Index hedge exemption:

- The account in which the exempt option positions are held ("hedge exemption account") has received prior Exchange approval for the hedge exemption specifying the maximum number of contracts which may be exempt under the proposed new Interpretation. The hedge exemption account has provided all information required on Exchange-approved forms and has kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two (2) business days or such other time period designated by the Department of Market Regulation furnish the Department of Market Regulation with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.
- A hedge exemption account that is not carried by a CBOE member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.
- The hedge exemption account maintains a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of a net long or short position in Equity-Based Volatility Index futures contracts or in options on Vol Index futures contracts, or long or short positions in Vol Index options, for which the underlying Vol Index is included in the same margin or cross-margin product group cleared at the Clearing Corporation as the Vol Index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.
- The exemption applies to positions in Vol Index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows: (1) The values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (a) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (b) of any opposite side of the market positions in Vol Index futures, options on Vol Index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows—the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.
- Only the following qualified hedging transactions and positions will be eligible for purposes of hedging a qualified portfolio (*i.e.* futures and options) pursuant to the proposed new Interpretation .01:
  - Long put(s) used to hedge the holdings of a qualified portfolio;
  - Long call(s) used to hedge a short position in a qualified portfolio;
  - Short call(s) used to hedge the holdings of a qualified portfolio; and
  - Short put(s) used to hedge a short position in a qualified portfolio.
- The following strategies may be effected only in conjunction with a qualified stock portfolio:
  - A short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a "collar"). Neither side of the collar transaction can be in-the-money

[8] *See* proposed amendment to Rule 24.6, *Days and Hours of Business.*

[9] *See* proposed amendment to Rule 24.9(a)(4) (adding Exchange-traded fund volatility indexes and Individual stock volatility indexes to the list of A.M.-settled index options approved for trading on the Exchange).

[10] *See* proposed amendment to Rule 24.9(a)(5) (revising rule to make "Volatility Index" options generic for purposes of this provision, which sets forth the method of determining the day that the exercise settlement value is calculated and of determining the expiration date and the last trading day for CBOE Volatility Index Options). The Exchange is also proposing to make technical changes to this rule provision as well.

[11] *See* proposed amendment to rule 24.5 and proposed new Interpretations and Policy .04 to rule 24.5.

at the time the position is established. For purposes of determining compliance with Rules 4.11 and proposed Rule 24.4C, a collar position will be treated as one (1) contract;

○ A long put position coupled with a short put position overlying the same Vol Index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s) (a "debit put spread position"); and

○ A short call position accompanied by a debit put spread position, where the short call(s) expires with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rules 4.11 and proposed Rule 24.4C, the short call and long put positions will be treated as one (1) contract.

• The hedge exemption account shall:

○ Liquidate and establish options, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

○ Liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.

○ Promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.

• If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to Vol Index options.

The Exchange is proposing that the margin requirements for Vol Index options be set at the same levels that apply to equity options under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. The pertinent provisions of Rule 12.3, *Margin Requirements,* have been amended to reflect these proposed revisions. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange hereby designates Vol Index options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). The Exchange notes that Vol Index FLEX Options will only expire on business days that non-FLEX options on Vol Indexes expire. This is because the term "exercise settlement value" in Rules 24A.4(b)(3) and 24B.4(b)(3), *Special Terms for FLEX Index Options,* has the same meaning set forth in Rule 24.9(5). As is described earlier, the Exchange is proposing to amend Rule 24.9(a)(5) to provide that the exercise settlement value of Vol Index options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which a Vol Index options expire.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of Vol Index options.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Vol Index options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these volatility indexes. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [12] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the introduction of Vol Index options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors.

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

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 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–2011–026 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–2011–026. This file number should be included on the

[12] 15 U.S.C. 78s(b)(1).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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–CBOE–2011–026 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8793 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64248; File No. SR–Phlx–2011–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Amend Phlx Rule 1001A, Position Limits

April 7, 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 6, 2011, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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. 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 section (d) of Exchange Rule 1001A, Position Limits, to make a nonsubstantive clarification that that section is inapplicable to options on Alpha Indexes. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend section (d) of Rule 1001A to make clear that it does not apply to options on Alpha Indexes. On February 7, 2011, the Commission approved the Exchange's proposed rule change to list and trade options on certain Alpha Indexes.[4] The proposed rule change included new section (f) of Rule 1001A, which provides in part that positions in Alpha Index options will be aggregated with positions in equity options on the underlying securities for purposes of determining compliance with position limits. Section (d) of Rule 1001A, however, predates options on Alpha Indexes and was not changed in that filing. It provides that index option contracts shall not be aggregated with option contracts on any stocks whose prices are the basis for calculation of the index. This proposed rule change will add an exception to section (d) so that it is clear on the face of that section that it is inapplicable to options on Alpha Indexes which are separately and specifically dealt with in Section (f).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[5] 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, by conforming section (d) of Rule 1001A to section (f) of that rule, clarifying the applicability of the rule for investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.[7]

[15] 17 CFR 200.30–3(a)(12).

[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] *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) SR–Phlx–2010–176.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change,

The Exchange has requested that the Commission waive the 30-day operative delay period, stating that no substantive change is intended to be made in this proposed rule change and that investors will benefit from the increased certainty of having the clarification of Rule 1001A become operative without delay. The Commission believes that, because the proposed rule change clarifies the Exchange's rules and changes no provision substantively, it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and hereby designates the proposal as operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–49 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–2011–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–2011–49 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8832 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

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 the pre-filing requirement.

[8] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64239; File No. SR–Phlx–2011–45]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

April 7, 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 March 31, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 .

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now 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.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Rule 3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended by SR–Phlx–2010–125, shall be in effect during a pilot period 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* [April 11, 2011]. If the pilot is not either extended or approved permanent by *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* [April 11, 2011], the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect.

(a)–(f) 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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change 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, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc. (collectively, the "Exchanges"), to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the Exchanges' clearly erroneous rules, so that it could participate in the pilot program.[4] 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.[5]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that a four month extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary. The Exchange notes, however, that the Exchanges are developing a "limit up/limit down" mechanism to reduce the negative impacts of sudden, unanticipated price movements in securities traded on the Exchanges. Under such a mechanism, trades in a security outside a price band would not be allowed, thus eliminating clearly erroneous transactions from occurring altogether. As such, the proposed extension may be shorter in duration should the Exchange adopt a limit up/limit down mechanism to address extraordinary market volatility. Accordingly, the Exchange is filing 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.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[6] 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)[7] 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 transparency and uniformity across markets concerning decisions to break erroneous trades.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[10] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–45 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–2011–45. 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

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010).

[5] Securities Exchange Act Release No. 63491 (December 9, 2010), 75 FR 78297 (December 15, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self- regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–45 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8831 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64235; File No. SR–BATS–2011–010]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Pilot Program Related to Clearly Erroneous Execution Reviews

April 7, 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 1, 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 11.17, entitled "Clearly Erroneous Executions." 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on April 11, 2011. The Exchange proposes to extend the pilot program 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.

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[4] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a pilot basis.

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.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] 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 Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8] The Exchange

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BATS–2010–016).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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

Continued

has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[9] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–BATS–2011–010 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–BATS–2011–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–2011–010 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8829 Filed 4–12–11; 8:45 am]

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prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64228; File No. SR–CHX–2011–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Clearly Erroneous Transactions

April 7, 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 5, 2010, 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. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6) [3] which is effective upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to clearly erroneous transactions. 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 Changes

1. Purpose

In September, 2010, CHX obtained Commission approval of a filing amending its rules relating to clearly erroneous transactions on a pilot basis until December 10, 2010.[4] This program was subsequently extended until April 11, 2011.[5] The proposed rule change merely extends the duration of the pilot program 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. Extending the pilot in this manner will allow it to continue until the limit up/limit down mechanism to address extraordinary market volatility is adopted.

2. Statutory Basis

Approval of the rule change proposed in this submission 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.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 34–62886 (September 10, 2010), 75 FR 56613 September 16, 2010) approving SR–CHX–2010–13.

[5] *See* Securities Exchange Act Release No. 34–63487 (December 9, 2010), 75 FR 78279 December 15, 2010).

[6] 15 U.S.C. 78f(b).

In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[7] 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, and, in general, protect investors and the public interest. The proposed rule change is also 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 transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions.

B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–2011–06 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–CHX–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 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–2011–06 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8792 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64217; File No. SR–CBOE–2011–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees

April 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 March 30, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to establish volume threshold tiers for the assessment of PAR Official Fees based on the percentage of volume that is effected by a PAR Official on behalf of an order originating firm or, as applicable, an executing firm. The proposed volume thresholds will apply in all options classes that have a PAR Official available to execute orders ("PAR Official Classes"), except Volatility Index Options. 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'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, CBOE 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. CBOE 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

CBOE is proposing to amend its Fees Schedule effective April 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in all PAR Official Classes [3] other than Volatility Index Options.[4] CBOE amended its Fees Schedule to establish PAR Official Fees in January 2011.[5] These fees apply to all orders executed by a PAR Official,[6] except for customer orders ("C" origin code) that are not directly routed to the trading floor (an order that is directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). In classes other than Volatility Index Options, such orders are currently charged $.02 per contract and, like floor brokerage fees, a discounted rate of $.01 per contract applies for crossed orders. These fees help to offset the Exchange's costs of providing PAR Official services (*e.g.,* salaries, etc). CBOE believes that the proposed tier structure will more equitably and appropriately assess the PAR Official Fees to those Trading Permit Holders that rely more heavily on PAR Officials to conduct their floor brokerage business. Reliance on PAR Officials as the primary means of execution is inconsistent with the Exchange's intent to provide PAR Official services as a supplementary means of execution for incidental orders. CBOE believes that, after further consideration, the existing fee structure does not allocate these fees currently to take into consideration the amount that Trading Permit Holders rely on PAR Officials such that those Trading Permit Holders that incidentally use PAR Officials are assessed the same fee as Trading Permit Holders that routinely conduct their business through PAR Officials and rely heavily on PAR Officials for the execution of orders.

CBOE is proposing to amend the Fees Schedule to establish volume threshold tiers for the assessment of the PAR Official Fees in all PAR Official Classes except Volatility Index Options. Specifically, CBOE is proposing to assess PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume that is effected by a PAR Official during a calendar month. The percentage will be calculated on a monthly basis by dividing the number of contracts executed by PAR Officials on behalf of an order originating firm or executing firm (as applicable) by the total number of contracts executed in open outcry (by or on behalf of an order originating firm or, as applicable, an executing firm) in PAR Official Classes. Contracts in Volatility Index Options shall be excluded from this calculation. The following sets forth the tier levels and specific fees that would be assessed to orders that are subject to PAR Official Fees:

Tier level	% Monthly volume executed through PAR official	Standard orders	Crossed orders (per side)
1	0–24.99	N/A	N/A
2	25–49.99	$.02	$.01
3	50–74.99	.03	.015
4	75–100	.04	.02

For example, a Floor Broker Trading Permit Holder would be assessed $.02 for all standard (non-cross) orders and $.01 for all crossed orders executed by a PAR Official on behalf of the Floor Broker during a calendar month if 25.5% of the Floor Broker Trading Permit Holder's total monthly (open outcry) volume in PAR Official Classes is executed by a PAR Official (Tier 2).

The PAR Official Fees compensate CBOE for providing overflow services to

[3] Currently, CBOE does not have a PAR Official available to execute orders in the OEF, OEX, SPX and XEO options classes.

[4] CBOE amended its Fees Schedule in March 2011 to establish distinct PAR Official Fees for Volatility Index Options to eliminate the disparity between Floor Brokerage Fees and PAR Official Fees assessed in Volatility Index Options. CBOE will continue to assess the PAR Official Fees in Volatility Index Options established in SR–CBOE–2011–022. *See* Securities Exchange Act Release No. 64070 (March 11, 2011), 76 FR 15025 (March 18, 2011) (SR–CBOE–2011–022).

[5] *See* Securities Exchange Act Release No. 67301 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116).

[6] A PAR Official is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a Designated Primary Market-Maker trading crowd with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any Trading Permit Holder that is approved to act as a Market-Maker. *See* CBOE Rule 7.12.

order originating firms or, as applicable, executing firms, particularly Floor Brokers,[7] when they do not have personnel available to act as agent. Some Trading Permit Holders or TPH organizations obtain only one or two Floor Broker Trading Permits, making it unlikely that, regardless of business level, they could cover all locations on the Exchange and thus rely on CBOE personnel as part of the Floor Broker's daily, ongoing business operations. CBOE is proposing to establish volume threshold tiers to reduce or eliminate PAR Official Fees for those order originating firms or executing firms that maintain sufficient staff to manage their floor brokerage operations and thus, do not rely heavily on CBOE personnel to execute their orders. CBOE believes that those firms that rely heavily on PAR Officials to conduct their floor brokerage business, such that PAR Officials execute more than an incidental number of orders on their behalf, may obtain a minimum number of Trading Permits to access the floor. Thus, these firms subsidize their floor brokerage operations at CBOE's expense in that PAR Officials are either contractors paid by CBOE or CBOE employees. Under the current proposal, Trading Permit Holders that routinely rely on PAR Officials to execute their orders will be subject to higher PAR Official Fees as CBOE is, in effect, subsidizing their floor brokerage operations and going beyond the Exchange's intent to provide PAR Official services as a supplementary means of execution for overflow orders.

An additional consideration when evaluating the equitability of the proposed tier structure is the cost of each Trading Permit. For example, Floor Broker Trading Permit Holders are subject to a $6,000 per month Trading Permit Fee.[8] A Floor Broker Trading Permit Holder that requires ten Floor Broker Trading Permits to adequately staff its business is subject to a cost of $60,000 per month for Trading Permit Fees (totaling $720,000 per year). By comparison, a Trading Permit Holder that routes the majority of its orders to PAR Officials for execution and maintains one Trading Permit is subject to a $6,000 per month Trading Permit Fee ($72,000 annually). The existing PAR Official Fee structure that imposes a flat per contract fee does not provide an incentive for firms to adequately staff their business as each Trading Permit Holder is currently assessed the same PAR Official Fees.

As provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. CBOE never intended PAR Officials to serve as the primary means of execution for order originating firms or executing firms. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials. CBOE believes that this proposal will "level the playing field" between those Trading Permit Holders that rely incidentally on PAR Officials and those Trading Permit Holders that rely heavily on PAR Officials by basing the PAR Official Fees on an order originating firm's or, as applicable, an executing firm's overall reliance on a PAR Official to conduct their business. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials are incurring higher costs to retain a sufficient number of Trading Permits and should not be subject to the same amount for PAR Official Fees incurred by a Trading Permit Holder that relies disproportionately on PAR Officials to conduct its floor brokerage business because it does not maintain an adequate number of Trading Permits to conduct its floor brokerage business and further, is not subject to the cost of the additional Trading Permits required to adequately staff its business.

Based on the data generated for January 2011, approximately 40% of CBOE Floor Broker Trading Permit Holders would fall under Tier 1 and would no longer be subject to PAR Official Fees. In addition, approximately one-third of the Floor Broker Trading Permit Holders fall under Tier 4, having a PAR Official execute more than 75% of the Trading Permit Holder's total monthly volume executed in open outcry in PAR Official Classes. The proposed volume threshold tiers apportion the higher cost to those Floor Broker Trading Permit Holders that rely heavily on PAR Officials to conduct their daily business. For these reasons, CBOE believes that the proposed implementation of volume threshold tiers is appropriate and establishes an objective standard for the equitable assessment of the PAR Official Fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[9] in general, and furthers the objectives of Section 6(b)(4)[10] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its trading permit holders and other persons using its facilities. The Exchange believes the proposed change is equitable, reasonable and not unfairly discriminatory, in that, in general, PAR Official Fees are intended to help the Exchange recover its costs of providing PAR Official services to Trading Permit Holders and the proposed change is intended to reasonably allocate such costs to order originating firms and executing firms based on the amount of business they conduct through PAR Officials. Specifically, the proposed fee tier structure is equitable in that all order originating firms or, as applicable, executing firms, are assessed the same fees at each tier level for orders executed by a PAR Official. Further, the proposed fee structure is not unfairly discriminatory because the tiers are based on the percentage of activity executed by a PAR Official. Each firm has the ability to route fewer orders to a PAR Official, such that they are not subject to higher PAR Official Fees.

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 that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of

[7] CBOE Rule 6.70 provides: "A Floor Broker is an individual (either a Trading Permit Holder or a nominee of a TPH organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received from Trading Permit Holders or from registered broker-dealers. A Floor Broker shall not accept an order from any other source unless he is the nominee of a TPH organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, a Floor Broker who is the nominee of such organization may then accept orders directly from public customers where (i) the organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements a Floor Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of demonstrating an adequate knowledge of the securities business."

[8] *See* CBOE Fees Schedule, Section 10.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

Rule 19b–4 [12] 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–2011–030 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–2011–030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–030 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8791 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64227; File No. SR–CBOE–2011–032]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of a CBSX Clearly Erroneous Policy Pilot Program

April 7, 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 March 31, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 has designated 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 extend a clearly erroneous policy pilot program pertaining to the CBOE Stock Exchange ("CBSX", the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. 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'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 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

Certain amendments to Rule 52.4, *Clearly Erroneous Policy,* were approved by the Commission on September 10, 2010 on a pilot basis. The pilot is currently set to expire on April 11, 2011.[5] The clearly erroneous policy changes were developed in consultation with other markets and the Commission staff to provide for uniform treatment: (i) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (ii) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. Additional changes were also made to Rule 52.4 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. As the duration of the pilot expires on April 11, 2011, the Exchange is proposing to extend the effectiveness of the clearly erroneous policy changes to Rule 52.4 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 as defined in Rule 6.3C, *Individual Stock Trading Pause Due to Extraordinary Market Volatility.*[6]

[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] Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–CBOE–2010–056) (approval order establishing pilot through December 10, 2010) and 63485 (December 9, 2010), 75 FR 78278 (December 15, 2010) (SR–CBOE–2010–113) (extension of pilot through April 11, 2011).

[6] "Circuit Breaker Stocks" means the stocks included in the S&P 500 Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act[7] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[12] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

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–2011–032 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–2011–032. 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–CBOE–2011–032 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8790 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

Products. *See* Interpretation and Policy .03 to Rule 6.3C.

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64252; File No. SR–EDGA–2011–09]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGA Rule 11.9 To Introduce Additional Routing Options to the Rule

April 7, 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 1, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") 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.

[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 proposes to amend Rule 11.9 to introduce additional routing options to the rule. 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, on the Commission's Web site at *http://www.sec.gov,* 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's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend Rule 11.9(b)(3) to add three new additional strategies.

In Rule 11.9(b)(3), the Exchange describes that its system ("System") provides a variety of routing options. Routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible markets. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The new System routing options are described in more detail below.

The Exchange proposes to describe the ICMT routing strategy and add it to Rule 11.9(b)(3)(r). ICMT is a routing strategy under which an order checks the System for available shares, then is sent to destinations on the System routing table and then to EDGX Exchange, Inc. ("EDGX") as an immediate or cancel (IOC) Mid-Point Match ("MPM")order.[3] If there is no liquidity at EDGX to execute at the midpoint, the order is subsequently cancelled.

The Exchange proposes to describe the ROUQ routing strategy and add it to Rule 11.9(b)(3)(c)(iv). ROUQ is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

The Exchange proposes to describe the ROUZ routing strategy and add it to Rule 11.9(b)(3)(c)(v). ROUZ is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table.

The differences between the latter two strategies lies in the differences in the System routing tables for the ROUQ/ROUZ strategies. The ROUQ routing strategy goes to fewer low cost destinations than does the ROUZ routing strategy.

The Exchange also proposes to move the existing descriptions of ROUE, ROUT, and ROUX into Rule 11.9(b)(3)(c)(i)–(iii), respectively. Formerly, the descriptions were in Rules 11.9(b)(3)(c) for ROUE, 11.9(b)(3)(h) for ROUT, and 11.9(b)(3)(i) for ROUX.

The Exchange proposes to make conforming changes to the rest of the rule to re-letter the sections accordingly.

The Exchange believes that the proposed introduction of these routing options, described above, will provide market participants with greater flexibility in routing orders, without having to develop their own complicated routing strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act",[4] 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 change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4 (f)(6)(iii) thereunder.[6]

A proposed rule change filed under Rule 19b–4 (f)(6) normally may not become operative prior to 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange notes that waiver of this requirement will allow the Exchange to immediately offer Exchange users new routing strategies, and the inability to immediately offer the new routing strategies would put the Exchange at a competitive disadvantage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the new routing strategies to become immediately available to

[3] EDGX Rule 11.5(c)(7) defines a Mid-Point Match (MPM) order as an order with an instruction to execute it at the midpoint of the NBBO. A MPM order may be a Day Order, Fill-or-Kill Order, or IOC Order. The Exchange notes that members can send in a MPM order directly to EDGX without routing through the EDGA platform as an ICMT routing option.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] *Id.*

Exchange users. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[9]

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–EDGA–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–EDGA–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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–09 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8851 Filed 4–12–11; 8:45 am]

BILLING CODE 8011–01–P

[9] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12524 and #12525]

Wisconsin Disaster #WI–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of 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: 04/05/2011.

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: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/05/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Dane, Dodge, Grant, Iowa, Kenosha, Lafayette, Milwaukee, Racine, Walworth, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12524B and for economic injury is 12525B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–8774 Filed 4–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Intermediary Lending Pilot Program Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open meetings.

SUMMARY: The SBA is issuing this notice to announce the locations, dates, times, and agendas for public meetings regarding the Intermediary Lending Pilot (ILP) program established by the Small Business Jobs Act of 2010. The meetings will be open to the public.

DATES: The meeting dates and times are:

1. April 27, 2011, 9 a.m. to 11 a.m., San Francisco, CA.

2. May 5, 2011, 9 a.m. to 11 a.m., Washington, DC.

ADDRESSES: The meeting locations are:

1. San Francisco—SBA San Francisco District Office (Entrepreneur Center), 455 Market Street, Suite 600, San Francisco, CA 94105–2420.

2. Washington, DC—SBA Washington Metropolitan Area District Office (Conference Room), 740 15th Street, NW., Suite 300, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The SBA is holding open meetings to discuss the ILP program established in the Small Business Jobs Act of 2010 (Pub. L. 111–240). The ILP program is a three-year pilot program in which SBA will make direct loans of up to $1 million at an interest rate of 1 percent to up to 20

nonprofit lending intermediaries each year, subject to availability of funds. Intermediaries will then use the ILP loan funds to make loans of up to $200,000 to startup, newly established, or growing small business concerns. SBA regulations implementing the ILP program were published in the **Federal Register** on April 1, 2011 (76 FR 18007).

The purpose of these meetings is to provide general information to potential applicants on the requirements of the ILP program and the application and selection process to become an ILP Intermediary. SBA will not discuss specific applications at these meetings. The ILP program meetings are open to the public; however, seating is limited, so advance notice of attendance is requested. To register for an ILP program public meeting, please contact:

1. San Francisco—Steve Bangs, (415) 744–6792, fax (415) 744–6812, or e-mail *r.bangs@sba.gov* (please make sure the subject line reads ILP).

2. Washington, DC—Joanne Steiger, (202) 272–0348, fax (202) 481–5929, or e-mail *joanne.steiger@sba.gov* (please make sure the subject line reads ILP).

Reasonable accommodation for individuals with disabilities will be provided to those who request assistance at least two weeks in advance. If you are unable to attend the meeting in person, you may participate by telephone by calling (866) 740–1260 and using access code 3702102.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2011–8776 Filed 4–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7416]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 9 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

March 09, 2011 (Transmittal Number DDTC 10–116)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services for the support of an Airborne Intelligence and Surveillance System (AISS) for the Finland Ministry of Defense (MOD) acting through its Finnish Air Force Materiel Command Organization (FINAFMC).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary Legislative Affairs

March 10, 2011 (Transmittal Number DDTC 10–133)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the design, manufacture and delivery of the SATMEX 8 Commercial Communication Satellite to Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 18, 2011 (Transmittal Number DDTC 10–135)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) & 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services abroad in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the development and production of the Evolved Sea Sparrow Missile.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 11, 2011 (Transmittal Number DDTC 10–137)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of

defense articles, including technical data, or defense services abroad in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the manufacture and support of the KD2R–5 Aerial Target System Program for the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 09, 2011 (Transmittal Number DDTC 10–139)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are controlled under Category I of the United States Munitions List sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the permanent export of defense articles, including technical data, and defense services related to sale of various Revolvers and Pistols with accessories and spare parts to Smith & Wesson Distributing, Inc. in Belgium, in furtherance of a distribution agreement.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 28, 2011 (Transmittal Number DDTC 10–140)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, or defense services abroad in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the manufacture of T700–IHI–701C engine components for end use in AH–64D helicopters owned by the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 14, 2011 (Transmittal Number DDTC 10–143)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Singapore related to the sale of one G550 aircraft modified with a military TACAN beacon system and an AN/ARC–210 VHF/UHF radio for end use by the government of Singapore.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 14, 2011 (Transmittal Number DDTC 10–144)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of major defense equipment abroad.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to the Commonwealth of Australia for the manufacture, assembly, testing, qualification, maintenance and repair of military aiming lasers, infrared illuminators, and associated military electronics for end use by the governments of Australia and New Zealand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez
Acting Assistant Secretary, Legislative Affairs

March 15, 2011 (Transmittal Number DDTC 10–145)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to support the AVDS–1790 Engine

Improvement Program and depot level maintenance training for the HMPT 500 Transmissions currently installed in Ministry of Defense of Israel combat vehicles. The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Miguel E. Rodriguez

Acting Assistant Secretary, Legislative Affairs

Dated: April 4, 2011.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2011–8952 Filed 4–12–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 7414]

Culturally Significant Object Imported for Exhibition Determinations: "The Capitoline Venus"

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 object to be included in the exhibition "The Capitoline Venus," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC, from on or about June 8, 2011, until on or about September 5, 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 description of the exhibit object, 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: April 6, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–8909 Filed 4–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7413]

Culturally Significant Objects Imported for Exhibition Determinations: "Ancestors of the Lake: Art From Lake Sentani and Humboldt Bay"

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 "Ancestors of the Lake: Art from Lake Sentani and Humboldt Bay," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Menil Collection, Houston, Texas, from on or about May 6, 2011, until on or about August 28, 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: April 6, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–8904 Filed 4–12–11; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved or Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved or rescinded by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: January 1, 2011, through February 28, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval or rescission for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. *EQT Production Company, Pad ID:* Bearer, ABR–201101001, Susquehanna and Elder Townships, Cambria County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 4, 2011.

2. *Chesapeake Appalachia, LLC, Pad ID:* Wasyl, ABR–201101002, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2011.

3. *Chesapeake Appalachia, LLC, Pad ID:* Rocks, ABR–201101003, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2011.

4. *Ultra Resources, Inc., Pad ID:* Granger 850, ABR–201101004, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: January 10, 2011.

5. *Chesapeake Appalachia, LLC, Pad ID:* Meng, ABR–201101005, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2011.

6. *Chesapeake Appalachia, LLC, Pad ID:* Gunn, ABR–201101006, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 12, 2011.

7. *SWEPI, LP, Pad ID:* Knowlton 303, ABR–201101007, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 13, 2011.

8. *SWEPI, LP, Pad ID:* Stratton 885, ABR–201101008, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 13, 2011.

9. *SWEPI, LP, Pad ID:* Bielski 628, ABR–201101009, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 13, 2011.

10. *SWEPI, LP, Pad ID:* Violet Bieser Revoc Liv Tr 833, ABR–201101010, Chatham Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 14, 2011.

11. *SWEPI, LP, Pad ID:* Baker 1105, ABR–201101011, Deerfield Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 14, 2011.

12. *Chesapeake Appalachia, LLC, Pad ID:* Beech Flats, ABR–201101012, West Branch and Potter Townships, Potter County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 14, 2011.

13. *Chesapeake Appalachia, LLC, Pad ID:* Aukema, ABR–201101013, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 14, 2011.

14. *Chief Oil & Gas LLC, Pad ID:* Dacheux Drilling Pad #1, ABR–201101014, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: January 20, 2011.

15. *Chesapeake Appalachia, LLC, Pad ID:* Fausto, ABR–201101015, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 20, 2011.

16. *Chesapeake Appalachia, LLC, Pad ID:* Bo, ABR–201101016, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 20, 2011.

17. *Chesapeake Appalachia, LLC, Pad ID:* Struble, ABR–201101017, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 20, 2011.

18. *Seneca Resources Corporation, Pad ID:* DCNR Tract 001 Pad F, ABR–201101018, Sweden Township, Potter County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 20, 2011.

19. *Talisman Energy USA Inc., Pad ID:* 05 178 Peck Hill Farm, ABR–201101019, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: January 20, 2011.

20. *Chief Oil & Gas LLC, Pad ID:* Smithmyer Drilling Pad #1, ABR–201101020, Clearfield Township, Cambria County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: January 21, 2011.

21. *Chesapeake Appalachia, LLC, Pad ID:* DJ, ABR–201101021, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 21, 2011.

22. *Chesapeake Appalachia, LLC, Pad ID:* VRGC, ABR–201101022, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 21, 2011.

23. *Chief Oil & Gas LLC, Pad ID:* Andrus Drilling Pad #1, ABR–201101023, Granville Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: January 21, 2011.

24. *EXCO Resources (PA), LLC, Pad ID:* Hake Pad 53, ABR–201101024, Morris Township, Clearfield County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: January 26, 2011.

25. *Chesapeake Appalachia, LLC, Pad ID:* Bustin Homestead, ABR–201101025, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 26, 2011.

26. *Chesapeake Appalachia, LLC, Pad ID:* Joyce Road, ABR–201101026, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 26, 2011.

27. *Enerplus Resources (USA) Corporation, Pad ID:* Winner 1, ABR–201101027, West Keating Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 26, 2011.

28. *Chesapeake Appalachia, LLC, Pad ID:* Beeman, ABR–201101028, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 28, 2011.

29. *Southwestern Energy Production Company, Pad ID:* Longacre Pad, ABR–201101029, Jackson Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: January 28, 2011.

30. *Chesapeake Appalachia, LLC, Pad ID:* Walker, ABR–201101030, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 31, 2011.

31. *Chesapeake Appalachia, LLC, Pad ID:* Cuthbertson, ABR–201102001, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 3, 2011.

32. *Seneca Resources Corporation, Pad ID:* DCNR 100 Pad D, ABR–201102002, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 4, 2011.

33. *Seneca Resources Corporation, Pad ID:* DCNR 001 Pad G, ABR–201102003, Sweden Township, Potter County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 7, 2011.

34. *Chesapeake Appalachia, LLC, Pad ID:* Taffe, ABR–201102004, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 7, 2011.

35. *Chesapeake Appalachia, LLC, Pad ID:* Jokah, ABR–201102005, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 7, 2011.

36. *Chesapeake Appalachia, LLC, Pad ID:* Harnish, ABR–201102006, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 8, 2011.

37. *Seneca Resources Corporation, Pad ID:* DCNR 100 Pad C, ABR–201102007, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 8, 2011.

38. *Talisman Energy USA Inc., Pad ID:* 05 081 Uhouse D, ABR–201102008, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: February 8, 2011.

39. *Talisman Energy USA Inc., Pad ID:* 05 181 Peck Hill Farm, ABR–201102009, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: February 10, 2011.

40. *SWEPI, LP, Pad ID:* MY TB INV LLC 891, ABR–201102010, Deerfield Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 10, 2011.

41. *Chesapeake Appalachia, LLC, Pad ID:* Corl, ABR–201102011, Colley Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 10, 2011.

42. *Chesapeake Appalachia, LLC, Pad ID:* Rinker, ABR–201102012, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 11, 2011.

43. *SWEPI, LP, Pad ID:* Smith 606, ABR–201102013, Duncan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

44. *SWEPI, LP, Pad ID:* Kuhl 529, ABR–201102014, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

45. *SWEPI, LP, Pad ID:* Stanley 1106, ABR–201102015, Osceola Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

46. *SWEPI, LP, Pad ID:* Cole 495, ABR–201102016, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

47. *SWEPI, LP, Pad ID:* Bowers 838, ABR–201102017, Chatham Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

48. *SWEPI, LP, Pad ID:* Boroch 477, ABR–201102018, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

49. *SWEPI, LP, Pad ID:* Fenton 473, ABR–201102019, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 16, 2011.

50. *Talisman Energy USA Inc., Pad ID:* 05 100 Dewing R, ABR–201102020, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: February 17, 2011.

51. *Carrizo Marcellus, LLC, Pad ID:* Yarasavage Well Pad, ABR–201102021, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: February 17, 2011.

52. *Southwestern Energy Production Company, Pad ID:* Gerfin Pad, ABR–201102022, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: February 17, 2011.

53. *EQT Production Company, Pad ID:* Doe, ABR–201102023, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: February 17, 2011.

54. *EQT Production Company, Pad ID:* Whippoorwill, ABR–201102024, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: February 17, 2011.

55. *Chesapeake Appalachia, LLC, Pad ID:* Lantz, ABR–201102025, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 17, 2011.

56. *Chesapeake Appalachia, LLC, Pad ID:* Herr, ABR–201102026, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: February 17, 2011.

57. *Cabot Oil & Gas Corporation, Pad ID:* KrisuleviczV P1, ABR–201102027, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: February 23, 2011.

58. *Southwestern Energy Production Company, Pad ID:* Sheldon Pad, ABR–201102028, Jackson Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: February 23, 2011.

59. *Pennsylvania General Energy Company, LLC, Pad ID:* Pine Hill Pad C Wharton, ABR–201102029, Wharton Township, Potter County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: February 23, 2011.

60. *Chief Oil & Gas LLC, Pad ID:* American Asphalt Drilling Pad #1, ABR–201102030, Eaton Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: February 24, 2011.

61. *Seneca Resources Corporation, Pad ID:* Covington Pad M, ABR–201102031, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 25, 2011.

62. *Chief Oil & Gas LLC, Pad ID:* Garrison Drilling Pad #1, ABR–201102032, Lemon Township, Wyoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: February 25, 2011.

63. *Williams Production Appalachia LLC, Pad ID:* Knapik Well Pad, ABR–201102033, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 28, 2011.

64. *Williams Production Appalachia LLC, Pad ID:* Hayes Well Pad, ABR–201102034, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 28, 2011.

65. *Williams Production Appalachia LLC, Pad ID:* Herman Well Pad, ABR–201102035, Franklin Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: February 28, 2011.

66. *Southwestern Energy Production Company, Pad ID:* Demento Pad, ABR–201102036, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: February 28, 2011.

Rescinded Approval by Rule Issued Under 18 CFR 806.22(f)

1. *EnCana Oil & Gas (USA), Inc., Pad ID:* Farrell 1H, ABR–20100218, Lake Township, Luzerne County, Pa.; Consumptive Use of up to 1.000 mgd; Rescinded Date: February 16, 2011.

2. *EnCana Oil & Gas (USA), Inc., Pad ID:* Lansberry Perry 1V, ABR–20100227, Lehman Township, Luzerne County, Pa.; Consumptive Use of up to 1.000 mgd; Rescinded Date: February 16, 2011.

3. *EnCana Oil & Gas (USA), Inc., Pad ID:* 4P, ABR–201011016, Lake Township, Luzerne County, Pa.; Consumptive Use of up to 1.200 mgd; Rescinded Date: February 16, 2011.

4. *EnCana Oil & Gas (USA), Inc., Pad ID:* Kent North, ABR–201011038, Fairmount Township, Luzerne County, Pa.; Consumptive Use of up to 1.200 mgd; Rescinded Date: February 16, 2011.

5. *EnCana Oil & Gas (USA), Inc., Pad ID:* Kent South, ABR–201011039, Fairmount Township, Luzerne County, Pa.; Consumptive Use of up to 1.200 mgd; Rescinded Date: February 16, 2011.

6. *Chief Oil & Gas, LLC, Pad ID:* Vollers Drilling Pad #1, ABR–2011005, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Rescinded Date: February 16, 2011.

7. Eastern Shore Natural Gas Company, Mainline Extension Interconnect Project, ABR–201007001, Salisbury Township and West Sadsbury Township, Lancaster County and Chester County, Pa.; Consumptive Use of up to 0.300 mgd; Rescinded Date: February 28, 2011.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: April 5, 2011.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2011–8957 Filed 4–12–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2011–0057]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection(s): Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request

the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves Transportation Drug and Alcohol Testing. The information to be collected will be used to document tests conducted and actions taken to ensure safety in the workplace and/or is necessary because under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. DOT is required to publish this notice in the **Federal Register** in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Comments to this notice must be received by June 13, 2011.

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

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: You must include the agency name and docket number [DOT–OST–2011–0057] of this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W62–300, Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0529.

Title: Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Form Numbers: DOT F 1385; DOT F 1380.

Type of Review: Clearance of a renewal of an information collection.

Background: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 43 burden items among which are the U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385]. The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Custody and control is essential to the basic purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of positive, negative and refusal test results. The MIS data is used by each of the affected DOT Agencies (*i.e.,* Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their random testing rates.

Respondents: The information will be used by transportation employers, Department representatives, and a variety of service agents. Estimated total number of respondents is 2,620,309.

Frequency: The information will be collected annually.

Estimated Total Number Burden Hours: 584,841.

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 DOT's performance; (b) the accuracy of the estimated burden; (c) ways for the DOT 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on April 7, 2011.

Patricia Lawton,

DOT PRA Clearance Officer.

[FR Doc. 2011–9005 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 26, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0063.

Date Filed: March 23, 2011.

Parties: Members of the International Air Transport Association.

Subject: (a) TC3 (except within/to/from South West Pacific, between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands), Flex Fares Resolutions, Beijing, 11–12 May 2010, (Memo 1389).

TC3 (except within/to/from South West Pacific, between Korea, (Rep. of). Malaysia and Guam, Northern, Mariana Islands), Flex Fares Resolutions, Minutes (Memo 1390).

TC3 (except within/to/from South West Pacific, between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands), Flex Fares Resolutions, Beijing, 11–12 May 2010.

Technical Correction

(Memo 1391)

TC3 (except within/to/from South West Pacific, between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands), Flex Fares Tables, Beijing, 11–12 May 2010.

(Memo 1412)

(b) TC3 Flex Fares between Japan, Korea and South West Pacific within South West Pacific, between South Asian Subcontinent, South East Asia and South West Pacific.

TC3 (except within/to/from South West Pacific, between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands), Mail Vote 671.

(Memo 1422)

Intended effective date: 1 April 2011 and 1 June 2011.

Docket Number: DOT–OST–2011–0064.

Date Filed: March 23, 2011.

Parties: Members of the International Air Transport Association.

Subject: (a) TC3 between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands, Flex Fares Resolutions, MV639.

(Memo 1393)

(b) TC3 Flex Fares between Korea (Rep. of). Malaysia and Guam, Northern Mariana Islands, Mail Vote 672.

(Memo 1423)

Intended effective date: 1 April 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–8694 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 19, 2011

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0053.

Date Filed: March 18, 2011.

Parties: Members of the International Air Transport Association.

Subject: TC31 North & Central Pacific (except between Korea (Rep. of), Malaysia and USA) Flex Fares Resolutions Geneva, 12–13 April 2010 (Memo 0516).

(a) TC31 North & Central Pacific (except between USA and Korea (Rep. of), Malaysia) Minutes (Memo 518).

(b) TC31 North and Central Pacific (except between Korea (Rep. of), Malaysia and USA) Mail Vote 667—Resolution 111nn Flex Fares Package (Memo 0528).

Intended Effective Date: 1 April 2011.

Docket Number: DOT–OST–2011–0054.

Date Filed: March 18, 2011.

Parties: Members of the International Air Transport Association.

Subject: (a) TC31 North & Central Pacific Between Korea (Rep. of), Malaysia and USA Flex Fares Resolutions Geneva, 12–13 April 2010 (Memo 0517).

(b) TC31 North and Central Pacific between Korea (Rep. of), Malaysia and USA. Mail Vote 668—Resolution 111nn Flex Fares Package (Memo 0529).

Intended Effective Date: 1 April 2011.

Docket Number: DOT–OST–2011–0055.

Date Filed: March 18, 2011.

Parties: Members of the International Air Transport Association.

Subject: (a) TC123 North, Mid, South Atlantic (except between USA and Korea (Rep. of), Malaysia) Flex Fares Package—Resolutions (Memo 0472).

TC123 North, Mid, South Atlantic (except between USA and Korea (Rep. of), Malaysia) Minutes (Memo 0474).

(b) TC123 North, Mid, South Atlantic (except between USA and Korea (Rep. of), Malaysia).

Mail Vote 669 Resolution 111 at Flex Fares Package (Memo 0481).

Intended Effective Date: 1 April 2011.

Docket Number: DOT–OST–2011–0056.

Date Filed: March 18, 2011.

Parties: Members of the International Air Transport Association.

Subject: (a) TC123 North Atlantic Between USA and Korea (Rep. of), Malaysia Flex Fares Resolutions (Memo 0473).

(b) TC123 North Atlantic Between USA and Korea (Rep. of), Malaysia Mail Vote 670.

Resolution 111 at Flex Fares Package (Memo 0482).

Intended Effective Date: 1 April 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–8695 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–16]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 3, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1018 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments 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.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, ARM–200, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2010–1018.

Petitioner: NetJets Aviation, Inc.

Section of 14 CFR Affected: § 43.3(g).

Description of Relief Sought: NetJets requests relief from the requirements of § 43.3(g) to allow its pilots that are properly trained and qualified under an approved training program, to perform supervised updates of navigational software databases of installed flight management systems.

[FR Doc. 2011–8857 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Sellwood Bridge Project, SE Tacoma Street and Oregon Highway 43, Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Sellwood Bridge, SE Tacoma Street and Oregon 43, in Multnomah County, Oregon. This action grants approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before October 11, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jeff Graham, Operations Engineer, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301; (503) 399–5749; *Jeffrey.Graham@dot.gov.* The FHWA Oregon Division's Office's normal business hours are 7:30 a.m. to 4:15 p.m. (Pacific time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Oregon: Sellwood Bridge Project in Multnomah County, Oregon. The project will replace the existing bridge within its existing east-west corridor along SE Tacoma Street and construct a new interchange with Oregon 43 on the west end. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 26, 2010, in the FHWA Record of Decision (ROD) issued September 30, 2010, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the Oregon Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.sellwoodbridge.org* or viewed at public libraries in the project area.

This notice applies to all Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].

4. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Rivers and Harbors Act of 1899 (RHA) [33 U.S.C. 401–406]; Wetlands Mitigation (Sections 103 and 133) [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 5, 2011.

Jeff Graham,

Operations Engineer, Salem, Oregon.

[FR Doc. 2011–8835 Filed 4–12–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Program on NAFTA Long-Haul Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its proposal for the initiation of a United States-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the municipalities and commercial zones along the United States-Mexico border. The pilot program is part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions. This pilot program would allow Mexico-domiciled motor carriers to operate throughout the United States for up to 3 years. U.S.-domiciled motor carriers would be granted reciprocal rights to operate in Mexico for the same period. Participating Mexican carriers and drivers would be required to comply with all applicable U.S. laws and regulations, including those concerned with motor carrier safety, customs, immigration, vehicle registration and taxation, and fuel taxation. The safety of the participating carriers would be tracked closely by FMCSA with input from a Federal Advisory Committee.

DATES: Comments must be received on or before May 13, 2011.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2011–0097 using any one of the following methods:

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

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

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

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the "Public Participation" heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the "Privacy Act" heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (512) 916–5440, ext 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

Section 6901(a) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 [Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007] provides that before DOT may obligate or expend any funds to grant authority for Mexico-domiciled trucks to engage in cross-border long-haul operations, DOT must first test granting such authority through a pilot program that meets the standards of 49 U.S.C. 31135(c). In accordance with 49 U.S.C. 31315(c), the Secretary of Transportation has general authority to have safety measures "that are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved * * *."

In a pilot program, DOT collects specific data for evaluating alternatives to the regulations or innovative approaches to safety while ensuring that the goals of the regulations are satisfied. A pilot program may not last more than 3 years, and the number of participants in a pilot program must be large enough to ensure statistically valid findings. Pilot programs must include an oversight plan to ensure that participants comply with the terms and conditions of participation, and procedures to protect the health and safety of study participants and the general public. A pilot program may be initiated only after DOT publishes a detailed description of it in the **Federal Register** and provides an opportunity for public comment. This notice and request for public comment complies with this requirement. While, a pilot program may provide temporary regulatory relief from one or more regulations to a person or class of persons subject to the regulations, or a person or class of persons who intends to engage in an activity that would be subject to the regulations, in this pilot program DOT does not propose to exempt or relieve Mexico-domiciled motor carriers from any safety regulation. Mexico-domiciled motor carriers participating in the program will be required to comply with the existing motor carrier safety regulatory regime plus certain additional requirements associated with acceptance into and participation in the program.

Section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002 [Pub. L. 107–87, 115 Stat. 833, 864, December 18, 2001] (section 350) prohibited FMCSA from using funds made available in that Act to review or process applications from Mexico-domiciled motor carriers to operate beyond limited commercial zones along the United States-Mexico border until certain preconditions and safety requirements were met. The terms of section 350 have been reenacted in each subsequent DOT appropriations act. Section 350 required FMCSA to perform a pre-authorization safety audit (PASA) of any Mexico-domiciled carrier before that carrier is allowed to engage in long-haul operations in the United States. Vehicles the carrier will operate beyond the commercial zones of the United States-Mexico border that do not already have a Commercial Vehicle Safety Alliance (CVSA) decal would be required to be inspected, and any vehicle that did not display a decal would be required to pass an inspection at the border port of entry before being allowed to proceed. DOT was also directed to give a distinctive identification number to each Mexico-domiciled carrier that would operate beyond the border commercial zones to assist inspectors in enforcing motor carrier safety regulations. Additionally, every driver that will operate in the United States must have a valid commercial driver's license issued by Mexico. Section 350 also required DOT's Office of the Inspector General (OIG) to conduct a comprehensive review of the adequacy of inspection capacity, information infrastructure, enforcement capability and other specific factors relevant to safe operations by Mexico-domiciled carriers, and required the Secretary of Transportation to address the OIG's findings and certify that the opening of the border poses no safety risk. The OIG was also directed to conduct similar reviews at least annually thereafter. A number of the section 350 requirements were addressed by FMCSA in rulemakings published on March 19, 2002 (67 FR 12653, 67 FR 12702, 67 FR 12758, 67 FR 12776) and on May 13, 2002 (67 FR 31978).

Section 136 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 [Division I of the Omnibus Appropriations Act, 2009, Pub. L., 111–8, 123 Stat. 524, 932, March 11, 2009] prohibited DOT from expending funds made available in that Act to establish, implement or continue a cross-border motor carrier pilot program to allow Mexican-domiciled motor carriers to operate beyond the border commercial zones. The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 [Division A of the Consolidated

Appropriations Act, 2010, Pub. L. 111–117, 123 Stat. 3034, December 16, 2009] did not bar DOT or FMCSA from using funds on a cross-border long-haul program, but, pursuant to section 135 (123 Stat. at 3053) did continue the requirements of section 350. FMCSA continues to operate under the terms and conditions in its fiscal year 2010 appropriations act, as extended under various short-term continuing resolutions.

Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 also provides that simultaneous and comparable authority to operate within Mexico must be made available to U.S. carriers. Further, before the required pilot program may begin, the Department's OIG must submit a report to Congress verifying that DOT has complied with the requirements of section 350(a), and DOT must take any actions that are necessary to address issues raised by the OIG and must detail those actions in a report to Congress. Section 6901 also directed the OIG to submit an interim report to Congress 6 months after the initiation of a cross-border long-haul Mexican trucking pilot program and a final report after the pilot program is completed. The statute further specified that the report address the program's adequacy as a test of safety. Also as a precondition to beginning the pilot program, section 6901 requires that DOT provide an opportunity for public comment by publishing in the **Federal Register** information on the PASA's conducted. DOT must also publish for comment the standards that will be used to evaluate the pilot program, as well as a list of Federal motor carrier safety laws and regulations, including commercial driver's license requirements, for which the Secretary of Transportation will accept compliance with corresponding Mexican law or regulation as the equivalent to compliance with the U.S. law or regulation including an analysis of how the corresponding United States and Mexican laws and regulations differ. Further discussion of relevant U.S. and Mexican safety laws and regulations is provided in the section of this notice entitled "List of Federal Motor Carrier Safety Laws and Regulations for Which FMCSA Will Accept Compliance with a Corresponding Mexican Law or Regulation."

Background

Before 1982, Mexico- and Canada-domiciled motor carriers could apply to the Interstate Commerce Commission (ICC) for authority to operate within the United States. As a result of complaints that U.S. motor carriers were not allowed the same access to Mexican and Canadian markets that carriers from those nations enjoyed in this country, the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of new operating authority to motor carriers domiciled, or owned or controlled by persons domiciled in Canada or Mexico. While the disagreement with Canada was quickly resolved, the issue of trucking reciprocity with Mexico was not.

Currently, most Mexican carriers are allowed to operate only within the border commercial zones extending up to 25 miles into the United States. Every year Mexico-domiciled commercial motor vehicles (CMVs) cross into the United States about 4.5 million times. Mexico granted reciprocal authority to 10 U.S.-domiciled motor carriers to operate throughout Mexico during the time of FMCSA's previous demonstration project conducted between September 2007 and March 2009. Four of these motor carriers continue to operate in Mexico.

Trucking issues at the United States-Mexico border were not fully addressed until NAFTA was negotiated in the early 1990s. NAFTA required the United States to incrementally lift the moratorium on licensing Mexico-domiciled motor carriers to operate beyond the commercial zones. On January 1, 1994, the President modified the moratorium and the ICC began accepting applications from Mexico-domiciled passenger carriers to conduct international charter and tour bus operations in the United States. On December 13, 1995, the ICC published a rule and a revised application form for the processing of Mexico-domiciled property carrier applications (Form OP–1(MX)) (60 FR 63981). The ICC rules anticipated the implementation of the second phase of NAFTA, providing Mexican motor carriers of property with access to California, Arizona, New Mexico and Texas, and the third phase, providing access throughout the United States. However, at the end of 1995, the United States announced an indefinite delay in opening the border to long-haul Mexican CMVs.

In 1998, Mexico filed a claim against the United States, claiming that the United States' refusal to grant authority to Mexican trucking companies constituted a breach of the obligations in the NAFTA. On February 6, 2001, the Arbitration Panel issued its final report and ruled in Mexico's favor, concluding that the United States was in breach of its obligations, and Mexico could impose tariffs on U.S. exports to Mexico up to an amount commensurate with the loss of business resulting from the lack of U.S. compliance. The Panel noted that the United States could establish a safety oversight regime to ensure the safety of Mexican carriers entering the United States, but that the safety oversight regime could not be discriminatory and must be justified by safety data.

After the Administration announced its intent to resume the process for opening the border in 2001, Congress included section 350 in the Department of Transportation and Related Agencies Appropriations Act, 2002, as discussed in the "Legal Basis" section above.

In November 2002, former Secretary of Transportation Norman Mineta certified, as required by section 350(c)(2), that authorizing Mexico-domiciled motor carrier operations beyond the border commercial zones does not pose an unacceptable safety risk to the American public. Later that month, the President modified the moratorium to permit Mexico-domiciled motor carriers to provide cross-border cargo and scheduled passenger transportation beyond the border commercial zones. (Memorandum of November 27, 2002, for the Secretary of Transportation, "Determination under the Interstate Commerce Commission Termination Act of 1995," 67 FR 71795, December 2, 2002). The Secretary's certification was made in response to the June 25, 2002, DOT OIG report on the implementation of safety requirements at the United States-Mexico border. In a January 2005 follow-up report, the OIG concluded that FMCSA had sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight section 350 requirements that the OIG was required to review. The above reports are available in the docket to this notice.

Former Secretary of Transportation Mary E. Peters and Mexico's former Secretaria de Comunicaciones y Transportes (SCT) Luis Téllez Kuenzler announced a demonstration project to implement certain trucking provisions of NAFTA on February 23, 2007. The demonstration project was initiated on September 6, 2007, after the DOT complied with a number of conditions imposed by section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Act, 2007, as discussed further in the "Legal Basis" section above. The demonstration project was initially expected to last 1 year (see 72 FR 23883, May 1, 2007). On August 6, 2008, FMCSA announced that the demonstration project was being

extended from 1 year to the full 3 years allowed by section 31315(c)(2)(A) of title 49 United States Code (73 FR 45796) after Secretaries Peters and Téllez exchanged letters on the extension.

On March 11, 2009, President Obama signed into law the Omnibus Appropriations Act, 2009. Section 136 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 (Division I, title I of the Omnibus Appropriations Act, 2009) provides that:

> [N]one of the funds appropriated or otherwise made available under this Act may be used, directly or indirectly, to establish, implement, continue, promote, or in any way permit a cross-border motor carrier pilot program to allow Mexican-domiciled motor carriers to operate beyond the commercial zones along the international border between the United States and Mexico, including continuing, in whole or in part, any such program that was initiated prior to the date of the enactment of this Act.

(123 Stat. at 932).

In accordance with section 136, FMCSA terminated the cross-border demonstration project that began on September 6, 2007. The Agency ceased processing applications by prospective project participants and took other necessary steps to comply with the provision. (74 FR 11628, March 18, 2009).

On March 19, 2009, Mexico announced that it was exercising its rights under the 2001 NAFTA Arbitration Panel decision to impose retaliatory tariffs for the failure to allow Mexico-domiciled carriers to provide long-haul service into the United States. The tariffs affect approximately 90 U.S. export commodities at an estimated annual cost of $2.4 billion. The President directed DOT to work with the Office of the U.S. Trade Representative and the Department of State, along with leaders in Congress and Mexican officials, to propose legislation creating a new cross-border trucking project, to address the legitimate safety concerns of Congress while fulfilling our obligations under NAFTA. Secretary of Transportation Ray LaHood met with numerous members of Congress to gather their input. FMCSA tasked the Motor Carrier Safety Advisory Committee (MCSAC) with providing advice and guidance on essential elements that the Agency should consider when drafting proposed legislation to permit Mexico-domiciled trucks beyond the commercial zones along the United States-Mexico border. The MCSAC final report on this tasking is available on FMCSA's MCSAC Web page at *http://mcsac.fmcsa.dot.gov/Reports.htm.* Additionally, DOT formed a team to draft principles that would guide the creation of the draft legislation.

The President signed the DOT Fiscal Year (FY) 2010 Appropriations Act December 16, 2009. As mentioned previously in the "Legal Basis" section, unlike the previous year's appropriations, this Act did not prohibit the use of fiscal year 2010 funds on a cross border long-haul program. However, it continues the requirements of section 350 and section 6901 of Public Law 110–28. FMCSA continues to operate under the terms and conditions in its FY 2010 appropriations act, as extended under various short-term continuing resolutions.

On April 12, 2010, Secretary LaHood met with Mexico's former Secretary of Communications and Transport, Juan Molinar Horcasitas, and announced a plan to establish a working group to consider the next steps in implementing a cross-border trucking program. On May 19, 2010, President Obama and Mexico's President Felipe Calderon Hinojosa issued a joint statement acknowledging that safe, efficient, secure, and compatible transportation is a prerequisite for mutual economic growth. They committed to continue their countries' cooperation in system planning, operational coordination, and technical cooperation in key modes of transportation.

On January 6, 2011, Secretary LaHood shared with Congress and the Government of Mexico an initial concept document for a cross-border long-haul Mexican trucking pilot program that prioritizes safety, while satisfying the U.S.' international obligations. Also, on the same day, the Department posted the concept documents on its Web site for public viewing. See *http://www.dot.gov/affairs/2011/dot0111.html.* The initial concept document was the starting point for renewed negotiations with Mexico. Discussions with the Government of Mexico commenced on January 18, 2011. The preliminary agreement between DOT and the Secretariat of Communications and Transport is reflected in the program description and details provided below.

On March 3, 2011, President Obama met with Mexico's President Calderon and announced that there is a clear path forward to resolving the trucking between the United States and Mexico.

Pilot Program Description

Duration. As specified in section 31315(c)(2)(A) of title 49, United States Code, the scheduled life of this pilot program will not exceed 3 years.

Staged pilot program. The Mexico-domiciled motor carriers that participate in this pilot program would proceed through a series of stages prior to issuance of a permanent operating authority. Stage 1 would begin when the motor carrier is issued a provisional operating authority. The motor carrier's vehicles and drivers would be inspected each time they enter the United States for at least 3 months. This initial 3-month period may be extended if the motor carrier does not receive at least three vehicle inspections. FMCSA would also conduct an evaluation of the motor carrier's performance during Stage 1. This evaluation is described more fully later in this notice.

After a minimum of 3 months of operations in Stage 1, Mexico-domiciled carriers may be permitted to proceed to Stage 2 of the pilot program after FMCSA completes an evaluation of each carrier's performance in Stage 1. During Stage 2, the motor carrier's vehicles would be inspected at a rate comparable to other Mexico-domiciled motor carriers that cross the United States-Mexico border. The motor carrier's safety data would be monitored to assure the motor carrier is operating in a safe manner. The motor carrier would continue to operate under a provisional operating authority. Within 18 months after a Mexico-domiciled motor carrier is issued provisional operating authority, FMCSA would conduct a compliance review on the motor carrier. If the motor carrier obtains a satisfactory safety rating, has no pending enforcement or safety improvement actions, and has operated under its provisional operating authority for at least 18 months, the provisional operating authority will become permanent, moving the carrier into Stage 3. If the motor carrier obtains a less than satisfactory safety rating, FMCSA would take action as required by 49 CFR part 385 to suspend and/or revoke the motor carrier's operating authority.

Stage 3 of the pilot program would begin for each motor carrier upon eceipt of permanent operating authority. The motor carrier must continue to operate in accordance with the Federal Motor Carrier Safety Regulations (FMCSRs) and the requirements set forth in this notice.

Reciprocity with Mexico. Consistent with section 6901(a)(3) of Public law 110–28, FMCSA will not grant operating authority to Mexico-domiciled motor carriers to operate beyond the U.S. municipalities and commercial zones along the United States-Mexico border unless the Government of Mexico simultaneously permits comparable

authority to be granted to U.S.-domiciled motor carriers to transport international cargo in Mexico.

Previous Demonstration Program Participants. A Mexico-domiciled motor carrier that participated in the 2007–2009 demonstration project and operated under provisional operating authority in that pilot would receive credit for the amount of time it operated under authority in calculating the 18 month provisional operating authority period.

Hazardous Materials and Passenger Transportation. Consistent with section 6901(d) of Public Law 110–28, operating authority granted under the pilot program excludes the transportation of placardable quantities of hazardous materials and passengers. Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172.

Drivers and Vehicles. Mexico-domiciled motor carriers participating in the pilot program would designate the vehicles and drivers they wish to use in the pilot program. All designated vehicles and drivers must be approved by FMCSA prior to the participating motor carrier using the vehicles or drivers for transportation beyond the commercial zones along the United States-Mexico border. The requirements for FMCSA approval of drivers and vehicles are described in this notice.

License Checks.—In compliance with section 350(a)(3), FMCSA will ensure that at least 50 percent of participating drivers' licenses are checked when crossing the border. This may be accomplished during Level I, II or III inspections.

International Cargo. The operating authority granted under this pilot program would authorize the motor carrier to transport international cargo in the United States. As specified in 49 CFR 365.501(b), Mexico-domiciled carriers participating in the pilot program may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo. Therefore, a carrier that would provide point-to-point transportation services in the United States would be operating beyond the scope of its operating authority and would be in violation of 49 CFR 392.9a(a). Additionally, participating motor carriers must comply with regulations prohibiting the transportation of domestic cargo (cabotage) including, but not limited to, 19 CFR 123.14 (U.S. Customs and Border Protection regulations concerning entry of foreign-based trucks, buses, and taxicabs in international traffic) and 8 CFR 214.2(b)(4)(i)(E)(1) (U.S. Department of Homeland Security (DHS) regulations concerning cabotage. (See further discussion below under the section entitled "Point-to-Point Transportation Prohibited.").

Security Screening. FMCSA would submit information on the applicant motor carriers and their drivers designated for long-haul operations in the pilot program to DHS for security screening. Motor carriers and/or drivers that fail DHS's security screening would not be eligible for participation in the pilot program. Reasons a motor carrier or driver may not pass DHS security screening may include: Providing false or incomplete information; conviction of any criminal offense or pending criminal charges or outstanding warrants; violation of any customs, immigration or agriculture regulations or laws; the carrier or driver is the subject of an ongoing investigation by any Federal, State or local law enforcement agency; the motor carrier or driver is inadmissible to the United States under immigration regulations, including applicants with approved waivers of inadmissibility or parole documentation; DHS is not satisfied concerning the motor carrier's or driver's low-risk status; DHS cannot determine an applicant's criminal, residence or employment history; or the motor carrier or driver is subject to National Security Entry Exit Registration System or other special registration programs.

Liability Insurance. Mexico-domiciled motor carriers participating in the pilot program must maintain a certificate of insurance or surety bond on file with FMCSA, as prescribed in 49 CFR 387.313, throughout the pilot program. The insurance or surety bond must be underwritten by a U.S. insurance or surety bond company.

Commercial Vehicle Safety Alliance Safety (CVSA) Decal. The motor carrier must maintain a valid CVSA decal on each vehicle it enrolls in this pilot program in accordance with 49 CFR 365.511.

Emission Control Label. Any vehicle with a diesel engine to be used by a motor carrier in this pilot program must have an emission control label as described in 40 CFR 86.007–35 that indicates the engine conforms to the U.S. Environmental Protection Agency (EPA) regulations applicable to 1998 or later. Alternatively, the motor carrier may present documentation from the engine manufacturer indicating the engine conforms to the EPA regulations applicable to 1998 or later.

Federal Motor Vehicle Safety Standard (FMVSS). Any vehicle used by a motor carrier in this pilot program must display a FMVSS certification label or Canadian Motor Vehicle Safety Standard (CMVSS) certification label affixed by the original vehicle manufacturer at the time the vehicle was built. Alternatively, a motor carrier may use a vehicle manufactured for use in Mexico that does not possess an FMVSS or CMVSS label, if the vehicle is of model year 1996 or newer and it is equipped with all the safety equipment and features required by the FMVSSs in effect on the date of manufacture, such as automatic slack adjusters and antilock braking systems (ABS) if applicable. Information available to FMCSA from the Truck Manufacturers Association (TMA) indicates that most trucks manufactured in Mexico since 1993 were built to the FMVSSs, even if they were not specifically certified as such. (70 FR 50273) A copy of TMA's letter that provided this information is available in the docket for this notice.

Electronic Monitoring Device. FMCSA would equip each vehicle approved for use by Mexico-domiciled motor carriers in this pilot program with an electronic monitoring device such as a global positioning system and/or electronic on board recording device. As part of participating in this pilot program, the device must be operational on the vehicle throughout the duration of the pilot program.

General Qualifications of Drivers. A driver may not participate in this pilot program unless the driver can read and speak the English language sufficiently to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records required by FMCSA.

Environmental Review. FMCSA will prepare an Environmental Assessment (EA) for this pilot program prior to its commencement and seek comments on the draft EA in accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*).

Measures To Protect the Health and Safety of the Public. The FMCSA has developed an extensive oversight system to protect the health and safety of the public and FMCSA will apply it to Mexico-domiciled motor carriers. These measures are outlined in 49 CFR parts 350–396 and include providing grants to States for commercial vehicle enforcement activities, regulations outlining the application procedures, regulations explaining how FMCSA will

assess safety ratings and civil penalties as well as amounts of possible civil penalties, insurance requirements, drug and alcohol testing requirements, commercial driver's license (CDL) requirements, general operating requirements, driver qualification requirements, vehicle parts and maintenance requirements, and hours-of-service requirements. These requirements apply to Mexico-domiciled carriers operating in this pilot program, just as they do to any commercial motor vehicle, driver, or carrier operating in the United States. The description below focuses on the main features of FMCSA's system to protect the health and safety of the public that are unique to this pilot program, but is not intended to imply that all regulations outlined above do not apply at all times.

Other Federal and State Laws and Regulations. Mexico-domiciled motor carriers participating in the pilot program are required to comply with all applicable Federal and State laws and regulations including, but not limited to, vehicle size and weight, environmental, tax, and vehicle registration requirements.

Process for Applying for OP–1(MX) Operating Authority

The process for applying for participation in the pilot program begins with a 28-page application that gathers specific information about the carrier, its affiliations, its insurance, its safety programs, and its compliance with U.S. laws. In addition to providing general information, the carrier must complete up to 35 safety and compliance certifications and provide information regarding its systems for monitoring hours of service and crashes and complying with DOT drug and alcohol testing requirements.

To participate in the pilot program, a Mexico-domiciled motor carrier must, pursuant to existing regulations, submit (1) Form OP–1(MX), "Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border"; (2) Form MCS–150, the "Motor Carrier Identification Report"; and (3) notification of the means used to designate agents for service of legal process, either by submitting Form BOC–3, "Designation of Agents—Motor Carriers, Brokers and Freight Forwarders," or a letter stating that the applicant will use a process agent service that will submit Form BOC–3 electronically. The forms are available on the Internet at *http://www.fmcsa.dot.gov/forms/print/r-l-forms.htm.*

FMCSA would compare the information and certifications provided in the application with information maintained in databases of the governments of Mexico and the United States. The appropriate fee must be submitted, as applicable.

FMCSA developed special rules that govern Mexico-domiciled motor carriers during the application process and for several years after receiving OP–1(MX) operating authority. They are codified in 49 CFR 365.501 through 365.511. These rules impose requirements on Mexico-domiciled motor carriers in addition to those imposed on U.S.-domiciled motor carriers seeking operating authority.

Pre-Authorization Safety Audit

A Mexico-domiciled carrier must satisfactorily complete the FMCSA-administered PASA required under FMCSA regulations before it is granted provisional authority to operate in the United States beyond the border commercial zones. The PASA is a review of the carrier's safety management systems including written procedures and records to validate the accuracy of the information and certifications provided in the application. The PASA will determine whether the carrier has established and exercises the basic safety management controls necessary to ensure safe operations. The carrier would not be granted provisional operating authority if FMCSA determines that its safety management controls are inadequate, using the standards in Appendix A to subpart E of 49 CFR part 365. Vehicles designated for cross-border long-haul operations within the United States would be inspected; if the vehicle passes the inspection, a CVSA decal would be affixed by the inspector.

Each PASA would be conducted in accordance with 49 CFR part 365. The carrier would be denied provisional operating authority if FMCSA cannot:

1. Verify available performance data and safety management programs.

2. Verify the existence of a controlled substances and alcohol testing program consistent with 49 CFR part 40. FMCSA would ensure that the carrier has information on collection sites and laboratories it intends to use.

3. Verify a system of compliance with hours-of-service rules in 49 CFR part 395, including recordkeeping and retention.

4. Verify the carrier has the ability to obtain financial responsibility as required by 49 CFR part 387, including the ability to obtain insurance in the United States.

5. Verify records of periodic vehicle inspections, as required by 49 CFR part 396.

6. Verify that each driver the carrier intends to assign to operate under the pilot program meets the requirements of 49 CFR parts 383 and 391. This would include confirmation of the validity of each driver's Licencia Federal de Conductor (LF) through the Mexican driver license information system and a check of the Mexican State licensing records and the Commercial Driver's License Information System (CDLIS) for violations, suspensions, etc.

7. Review of available data concerning safety history and other information necessary to determine familiarity with and preparedness to comply with the FMCSRs and Federal Hazardous Materials Regulations that apply to the transportation of non-placardable hazardous materials.

8. Evaluate safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections.

9. Inspect each vehicle the carrier intends to operate under the pilot program unless the vehicle has received and displays a current CVSA decal.

10. Interview carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

11. Obtain any other information required by the FMCSA to complete the PASA.

Applicant carriers would designate and identify drivers and vehicles that will perform cross-border long-haul operations in the pilot program.[1] FMCSA would verify driver qualifications, including confirming the validity of the driver's LF and review any Federal and State driver license history for traffic violations that would disqualify the driver for operations in the United States. FMCSA would also conduct an English Language Proficiency assessment of each participating driver to ensure compliance with 49 CFR 391.11(b)(2). The assessment would be conducted orally, in English, and would include a test on knowledge of U.S. traffic signs.

At the time of the PASA, FMCSA will inspect participating vehicles to determine whether they:

a. Comply with the FMVSSs; and

[1] Carriers' selection of specific vehicles to participate is limited to the new program only. Once the new program ends, carriers will not have the option of selecting specific vehicles. Instead, all vehicles that may enter the United States for carriers with OP–1 authority will be required to comply with all FMCSRs.

b. Display an EPA emission control label indicating the engine conforms to the EPA regulations applicable to 1998 or later. Alternatively, the Mexico-domiciled motor carrier can present documents from the engine manufacturer indicating the engine conforms to the EPA regulations applicable to 1998 or later.

FMCSA will also obtain the following information but will not consider the information in its evaluation of the motor carrier for entry into the program:

a. Whether environmental post-treatment equipment or other emissions-related equipment has been installed on any vehicle designated for participating in the pilot program; and

b. The primary ports of entry the applicant Mexico-domiciled motor carrier intends to use. (There is no restriction on which ports of entry the carrier may use during the program. This information would be used to allocate FMCSA resources.)

Issuance of Operating Authority

If a carrier successfully completes the PASA and FMCSA approves its application, the Agency will publish a summary of the application as a provisional grant of authority in the FMCSA Register, at *http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain.* In addition, FMCSA will publish comprehensive data and information on the PASAs conducted of Mexico-domiciled motor carriers that are granted authority to operate beyond the commercial zones on the U.S. Mexico border. However, no carrier would be authorized to conduct any cross-border long-haul transportation until it has made the insurance filings required by 49 CFR 365.507(e)(1) and designated a process agent as required by 49 CFR 365.503(a)(3). Additionally, no Mexico-domiciled motor carrier will be authorized to operate beyond the commercial zones of the United States-Mexico border until this notice-and-comment procedure is completed.

Upon granting provisional operating authority, FMCSA will assign a unique USDOT Number, including an "X" suffix, which identifies the CMVs authorized to operate beyond the municipalities and commercial zones on the United States-Mexico border.

Termination of the Pilot Program

The pilot program would operate for up to 3 years from the date FMCSA grants the first provisional certificate, unless the Agency collects sufficient data to draw statistically valid conclusions before 3 years elapse or if it is determined the continuation of the pilot program would not be consistent with the goals and objectives of the pilot, in which case the pilot may be terminated earlier.

Provisional or permanent operating authority may be suspended or revoked at any time during the pilot program if FMCSA determines that the carrier has failed to comply with the terms and conditions of the pilot program or if the carrier's safety performance does not meet the standards established in 49 CFR part 385. Operating authority may also be suspended or revoked if the motor carrier is found to have transported passengers or placardable quantities of hazardous materials in the United States, or is operating beyond the scope of its operating authority.

Operating in the United States Under OP–1(MX) Provisional Operating Authority

Mexico-domiciled motor carriers with provisional operating authority are subject to the enhanced safety monitoring program of 49 CFR part 385, subpart B, and would be monitored on an on-going basis. Carriers committing any violations specified in 49 CFR 385.105(a) and identified through roadside inspections, or other means, may be subject to a compliance review, required to submit documentation of corrective action, and/or subject to enforcement action.

Permanent Operating Authority

Mexico-domiciled carriers that receive a satisfactory rating after a compliance review, complete at least 18 months of operation, and have no pending enforcement or safety improvement actions, are eligible for permanent authority in the pilot program. To maintain permanent authority, carriers must comply with all FMCSRs and continue to renew the CVSA safety decal every 90 days for 3 years. During the duration of the pilot program, carriers must update driver and vehicle records with FMCSA. Any additional vehicles or drivers the motor carrier wishes to include in the pilot program must be approved by FMCSA before the carrier may use the driver or vehicle for long-haul transportation.

Mexico-domiciled carriers that participate are eligible to convert their permanent authority granted during the pilot program to standard permanent authority, similar to U.S.-domiciled carriers, upon the completion of the pilot program. FMCSA intends this to be an administrative process that would occur once the pilot program ends.

Point-to-Point Transportation Prohibited

Mexico-domiciled motor carriers are also subject to DHS and DOT cabotage requirements and are prohibited from providing domestic point-to-point transportation while operating in the United States. Vehicles and drivers violating the prohibition on domestic point-to-point transportation will be placed out of service under the DOT regulations and may be subject to civil penalties. DHS may also prohibit the driver from entering the United States in the future. FMCSA, in coordination with the International Association of Chiefs of Police (IACP), developed and is providing training to State and local law enforcement agencies on the cabotage requirements.

Monitoring, Oversight and Enforcement

FMCSA would monitor the operational safety of all Mexico-domiciled motor carriers participating in the pilot program. To accomplish this, FMCSA would work closely with State CMV safety agencies, the lead Motor Carrier Safety Assistance Program agencies, IACP, CVSA, DHS, and others. Field monitoring would include inspections of vehicles, verification of compliance with the terms of the motor carrier's operating authority, driver license checks, crash reporting, and initiation of enforcement actions, when appropriate.

Monitoring and oversight of carriers and drivers participating in the pilot program would vary depending on the experience and safety record of the carrier. Stage 1 of the program would require the motor carrier's participating trucks and drivers to be inspected every time a vehicle crosses the border northbound. Stage 1 vehicles must display current CVSA decals.

Carriers would progress to Stage 2 only after FMCSA evaluates the performance of the carrier during Stage 1. A carrier will be permitted to progress to Stage 2 in the pilot program if FMCSA determines that the carrier has out-of-service rates that are at or below the U.S. national averages and its Safety Management System (SMS) scores for trucks operating in the pilot program are below the FMCSA threshold levels. Once a motor carrier is in Stage 2, inspections at the border crossings would be at a rate similar to that of other Mexico-domiciled motor carriers that cross the United States-Mexico border. Stage 2 vehicles still must display current CVSA decals.

After the motor carrier successfully completes a compliance review and receives a satisfactory rating within 18

months of beginning cross-border long-haul operations, and completes 18 months of operation with provisional operating authority, the motor carrier would be granted permanent authority. The vehicles and drivers would be inspected at the border crossings at the same rate as commercial zone carriers. CMVs operating in the United States must display current CVSA decals for 3 years from the date the carrier is granted permanent operating authority.

All participating long-haul vehicles must have a FMCSA-issued electronic monitoring device installed and activated at all times. These devices would allow FMCSA to monitor compliance with pilot program requirements, including hours of service requirements and domestic point-to-point transportation prohibitions.

Monitoring would also include electronic data collection and analysis. Data collected as a result of field monitoring and other activities would be entered into FMCSA databases and made available for public review on FMCSA's Web site. The data would be tracked and analyzed to identify potential compliance and safety issues. Appropriate action would be taken to resolve identified compliance and safety issues. This could include suspension, revocation of operating authority, or the initiation of other enforcement action against a motor carrier or driver. FMCSA will conduct ongoing monitoring to determine if the pilot program is having adverse effects on motor carrier safety.

Enforcement is a key component of the monitoring and oversight effort. FMCSA is providing ongoing training and guidance to Federal and State auditors, inspectors and investigators to ensure the adequacy of their knowledge and understanding of the pilot program and the procedures for taking enforcement actions against carriers or drivers participating in the pilot.

To ensure carrier compliance with operating authority limitations, including the prohibition of domestic point-to-point transportation of cargo in the United States, FMCSA and IACP developed and implemented a training program that provides State and local officials detailed information on cabotage regulations and enforcement procedures.

FMCSA would require roadside enforcement officers to follow DHS guidance concerning the enforcement of DHS cabotage regulations. This material is incorporated into the CVSA North American Standard Inspection Course and previously provided to roadside enforcement officers.

FMCSA will also monitor the insurance filings of participating carriers to ensure that there are no lapses in coverage.

List of Federal Motor Carrier Safety Laws and Regulations for Which FMCSA Will Accept Compliance With a Corresponding Mexican Law or Regulation

The Secretary of Transportation will accept only three areas of Mexican regulations as being equivalent to U.S. regulations. The first area is the set of regulations governing Mexican Commercial Driver's Licenses (CDL). The United States' acceptance of a Mexican LF dates back to November 21, 1991, when the Federal Highway Administrator determined that the Mexican CDLs are equivalent to the standards of the U.S. regulations and entered into a Memorandum of Understanding (MOU) with Mexico.

FMCSA is in the process of updating this MOU.[2] As part of this process, on February 17, 2011, representatives from FMCSA, CVSA and the American Association of Motor Vehicle Administrators visited a Mexican driver license facility, medical qualification facility, and test and inspection location. During these site visits FMCSA and its partner organizations observed Mexico to have rigorous requirements for knowledge and skills testing that are similar to those in the United States. In addition, Mexico requires that all new commercial drivers undergo training prior to testing and requires additional retraining each time the license is renewed. In contrast, U.S. regulations do not currently require any specific training prior to testing for, or renewal of, a U.S. CDL.

Mexico will disqualify a driver's LF for safety infractions or testing positive for the use of drugs. Because Mexico's disqualification standards are not identical to U.S. standards, FMCSA has developed a system to monitor the performance of Mexico-licensed drivers while operating in the United States and to disqualify these drivers if they incur violations that would result in a U.S. driver's license being suspended. In addition, the United States has access to traffic violation data for violations that occur in Mexico and are associated with the Mexican LF. Finally, FMCSA would require that any driver designated by a Mexico-domiciled carrier for long-haul transportation provide the United States with a copy of the driving record for any Mexican State driver's license he or she may also hold. FMCSA would combine any violations from the driver's record in the United States, the driver's Mexican federal record, and the driver's Mexican State record to determine if the driver would be disqualified from driving under the standards set forth in 49 CFR 383.51. Therefore, FMCSA is not relying solely on Mexico's disqualification standards, but is imposing its own standards in addition to any disqualifications that may be taken by the Mexican government.

Second, the Secretary of Transportation will also consider that physical examinations conducted by Mexican doctors and drug testing specimens collected by Mexican medical collection facilities are equivalent to the process for examinations conducted, and test specimens collected, in the United States. In Mexico, in order to obtain the LF a driver must meet the requirements established by the Ley de Caminos, Puentes y Autotransporte Federal (LCPAF or Roads, Bridges and Federal Motor Carrier Transportation Act) Article 36, and Reglamento de Autotransporte Federal y Servicios Auxiliares (RAFSA, or Federal Motor Carrier Transportation Act) Article 89, which states that a Mexican driver must pass the medical examination required by Mexico's Transport and Communications Ministry (SCT), Directorship General of Protection and Prevention Medicine in Transportation (DGPMPT). This is the same medical exam performed on applicants in all modes of transportation (airline pilots, merchant mariners, and locomotive operators). The medical examination may be completed by government doctors or certified private physicians.

FMCSA examined the Mexican medical fitness for duty requirements and has found that the Mexican physical qualification regulations are more prescriptive, detailed, and stricter than those in the United States. For example, Mexican regulations address body mass index, cancers and tumors, skin and appendages, psychiatric and psychological disorders, and have specific standards for evaluation of the ear, nose and throat and the genitourinary system. These are all areas for which the United States has no regulatory standards. The only notable difference involves vision. Mexico only requires red color vision while the United States requires a color vision test for at least red, green, and yellow. FMCSA believes that, taken as a whole, Mexico's medical regulations are comparable to those in the United States, and provide a level of safety at least equivalent to the U.S. regulations. FMCSA also notes that Mexico's

[2] FMCSA notes it is also updating a similar MOU with Canada.

medical examinations are performed almost exclusively by physicians at Mexican government facilities, and when performed by private doctors, those doctors are specifically approved by the SCT.

Third, controlled substances testing in Mexico is conducted by personnel from SCT. DOT and SCT have implemented a MOU, under which Mexico has agreed to collect drug testing specimens using U.S. specimen collection procedures, including chain of custody requirements, and U.S. collection forms to ensure the integrity of the sample. DOT has translated its drug testing collection forms into Spanish as part of this MOU. Although most Mexican carriers that participated in the previous pilot program sent its drivers to U.S. collection facilities, the Secretary of Transportation would accept a drug test using a specimen collected in Mexico using our forms and procedures. Samples collected in Mexico would be tested at laboratories located in the United States that are certified by the Department of Health and Human Services under its National Laboratory Certification Program.

Table 1 below outlines the specific U.S. and Mexican regulations in the three areas where the Mexican regulations or processes are being accepted as meeting U.S. requirements.

TABLE 1

Description	United States	Mexico
Drug and Alcohol Testing Procedures—Random Testing..	• 49 CFR part 382	• Reglamento del Servicio de Medicina Preventiva del Transporte. • Requires random drug testing by motor carrier at a 50 percent rate. • Government conducts random drug testing at terminals, ports of entry, and specific areas along corridors.
Drug and Alcohol Testing Procedures—Collection of Samples.	• 49 CFR part 40 • Collection procedures outlined and detailed description of the custody.	• Reglamento del Servicio de Medicina Preventiva del Transporte. • DGPMPT–IT–02–01; DGPMPT–PE–02–F–01. • DGPMPT–PE–02. • DGPMPT–IT–02–01 thru 08. • Collection procedures have been ISO certified. • The United States and Mexico have a Memorandum of Understanding that Mexico will, when collecting samples to satisfy U.S. drug testing regulations, use U.S. collection procedures and forms. These forms have been translated into Spanish and provided to Mexico.
Drug and Alcohol Testing Procedures—Laboratory Testing.	• 49 CFR part 40 • Laboratories approved by the U.S. Department of Health and Human Services.	• Reglamento del Servicio de Medicina Preventiva del Transporte. • DGPMPT–PE–01–IE–01. • Regulations and procedures are equivalent to U.S. standards. • Laboratory is not certified due to lack of proper equipment and other procedural requirements.
Commercial Driver's License—Issuance	• 49 CFR part 383 • Outlines the knowledge, skills and testing procedures required to obtain a commercial driver's license.	• Ley de Caminos, Puentes y Autotransporte Federal. • Articlos 89 y 90, Reglamento de Autotransportes Federal y Servicio Auxilares. • Driver must provide proof of medical qualification, proof of address, and training (both skills and knowledge). • Must be renewed every 5 years (every 3 years for hazardous material category).
Commercial Driver's License— Training	• 49 CFR part 380 • Outlines special training requirements for longer combination vehicle drivers on basic operation, safe operating practices, advanced operations and non-driving activities training and an orientation.	• Articulo 36, 37, y 57 Ley de Caminos, Puentes y Autotransporte Federal. • Articlos 89 y 90, Reglamento de Autotransportes Federal y Servicio Auxilares. • Programa Minimo de Capacitacion para Conductores del Servicios de Autotransporte Federal y Transporte Privado, Para Referendo de Carga General (Tractorcamion Quinta Rueda y Camion Utitario).

TABLE 1—Continued

Description	United States	Mexico
	• Outlines special training requirements for entry level drivers on driver qualifications, hours of service, driver wellness, and whistleblower protection training.	• Outlines 41 hours of training requirements (theory) for new drivers transporting general cargo on General Introduction to Driving, Road Safety Education, Defensive Driving, Vehicle Operations, Preventive Maintenance and Emergency Repair, Latest Regulations, plus 100 hours of practical driving (behind the wheel), Practical Defensive driving (8 hours) and practical emergency repair (6 hours). • Outlines 58 (theory and practical) hours of continued training for returning drivers transporting general cargo on General Introduction, Health and Safety, Road Safety Education, Human Relations, Family and Lifestyle, Latest Rules and Technological Advances. • Outlines 16 hours of continuing education for drivers with a licencia federal de conductor.
Commercial Driver's License—Disqualifications	• 49 CFR part 383 • Outlines CDL disqualifications for major and serious traffic violations.	• Ley de Caminos, Puentes y Autotransporte Federal. • Reglamento del Servicio de Medicina Preventiva del Transporte. • Provides for the disqualification of drivers for major and serious traffic violations. • License can be canceled by a judge. • License can be canceled for three speeding violations in a one year period. • License can be canceled for leaving the scene of an accident without notifying the closest authority or abandoning the vehicle. • License can be canceled for altering the license. • License can be canceled for failing a drug test. • License cannot be obtained after failing a drug test without proof of success completion of a rehabilitation program. • License can be suspended for failing to provide accurate information on application. • Cancellation is valid for 10 years—cannot obtain a license for 10 years.
Medical Standards	• 49 CFR part 391 • US—Requires a comprehensive physical and psychological examination. • Medical examination is currently separate from the CDL issuance process.	• Reglamento del Servicio de Medicina Preventiva del Transporte. • Requires a comprehensive physical and psychological examination. • Medical examination is a pre-requisite to obtaining an LF. • Medical examination may be required while the driver is "in operation" (on duty) to determine if the driver is still qualified to drive.

Information and Reporting

FMCSA is committed to transparency during this pilot program. As a result, the Agency would be maintaining data on the pilot program on its Web site at *http://www.fmcsa.dot.gov.* FMCSA would use this site to post current information about the pilot program including, but not limited to, PASAs, the carriers participating, the vehicles approved for cross-border long-haul transportation, the results of roadside inspections for each carrier, and the number of trips into the United States beyond the commercial zones and the States traveled by program participants. FMCSA would also publish in the **Federal Register** comprehensive data and information on PASAs conducted on Mexico-domiciled carriers that are granted authority to operate beyond the border commercial zones.

The Department and Mexico's SCT would establish a monitoring group to supervise the implementation of the pilot program and to find solutions to issues affecting the operational performance of the pilot. The group would generally convene monthly in person, by video conference or by telephone. This group, composed of DOT and SCT employees, would discuss any issues that arise for carriers of either country, as they participate in the pilot program, and recommend changes as needed.

FMCSA is also establishing an oversight and monitoring mechanism by utilizing a Federal advisory committee. This committee would be made up of stakeholders and will be a subcommittee of the MCSAC. The monitoring group's objective is to review the implementation of the pilot program and recommend solutions to

issues affecting the operational performance of the pilot program.

The Department would be providing reports to Congress regarding this pilot program on an annual basis. These reports will be posted on FMCSA's Web site. Additionally, at the conclusion of the pilot program the Department would report to Congress the findings, conclusions, and recommendations of the program.

Additionally, the Department's OIG will be completing reviews of the pilot program within 6 months of its start and within 6 months of its completion. These reports would be posted on the Web site.

Program Evaluation

The objective of the pilot program is to collect and evaluate data on the safety performance of Mexico-domiciled carriers interested in and qualified to take advantage of the cross-border long-haul provisions of NAFTA. This study is to be completed to satisfy the requirement in the Agency's pilot program authority that requires "[a] specific data collection and safety analysis plan that identifies a method of comparison." (49 U.S.C. 31315(c)(2)(B)). Safety performance would be measured primarily in terms of violations assessed at the roadside, as a result of inspections conducted at traditional weigh stations, ports of entry, or during traffic enforcement activities. From these data, violation rates would be calculated for participating carriers, measuring the percentage of inspections having a particular type of violation. These violations rates include overall vehicle and driver out-of-service rates, as well as other violation rates pertaining to specific requirements of the FMCSRs. Many of these violation rates would capture information currently captured in the Agency's Compliance, Safety, Accountability program metrics.

Using the performance metrics described above, and up to 3 years of data collected during the pilot program, statistical tests would be performed to compare the safety performance of the Mexico-domiciled carriers participating in the pilot program with the overall performance of carriers domiciled in the United States. Specifically, using commonly accepted statistical practices for each metric, the Agency would test the "null hypothesis" that Mexico-domiciled carriers that may take future advantage of NAFTA's cross-border long-haul provisions will perform as well or better than the average carrier domiciled in the United States. Based on the data during the pilot program, FMCSA will either reject this null hypothesis (*i.e.,* conclude that the Mexico-domiciled carriers interested in and qualified to receive long-haul operating authority in the United States will perform worse than the average U.S.-domiciled carrier), or will conclude that the data collected do not allow one to reject this null hypothesis.

The degree to which differences in safety performance can be detected between the two populations depends, in part, on the total number of inspections performed on the carriers participating in the pilot program. The Agency seeks to detect statistically significant differences in the violation rates between the two populations when such differences are two percentage points in magnitude or greater, at a level of 90 percent confidence (see discussion below under the section heading "Target Number of Inspections"). Differences less than two percentage points in magnitude between the two populations would not be considered meaningful by the Agency.

Target Number of Inspections

A sample size of 4,100 roadside inspections performed on pilot program participants will allow the Agency to detect differences in violation rates of two percentage points or greater at the 90% level of confidence. This confidence level can be interpreted as follows: for each metric being compared, there is a less than or equal to 10% chance of concluding from the study that there is at least a two percentage point difference in the violation rates between the two populations when, in fact, there is not; or not concluding from the study that there is at least a two percentage point difference when, in fact, there is. We also note that a 90% confidence level is a commonly used level of confidence for statistical studies.

This sample size of 4,100 inspections will allow the Agency to detect two percentage point differences in any violation rate. For many metrics, however, fewer inspections will be required to achieve the same level of statistical power. This stems from the fact that for a violation rate, which is a proportion, the precision of the sample estimate depends on the value of the violation rate itself. Violation rates calculated from the study that are at or close to 50% will have the lowest level of precision, and rates that are larger or smaller than 50% will have higher levels of precision. For example, the average vehicle out-of-service rate for U.S. carriers is approximately 20%. As a result, a two percentage point difference in the vehicle out-of-service rates between the two populations can be detected with a sample size of approximately 2,800 inspections. This same sample size of 2,800 inspections will also allow the Agency to detect a two percentage point difference in the driver out-of-service rates (which is currently approximately 5% for U.S. carriers).

Target Number of Carriers

FMCSA anticipates that carriers participating in the pilot program will perform, on average, one long-haul border crossing per week per truck, and will have, on average, two trucks participating in the pilot program. Based on these characteristics, and an assumed attrition rate of 25% after 18 months of participation in the pilot program, the Agency calculates that a total of 46 carriers participating in the program will be sufficient to achieve a target of 4,100 inspections within 3 years. A total of 31 participating carriers will be sufficient for achieving a target of 2,800 inspections. However, if participating carriers have fewer average crossings per week or fewer vehicles enrolled in the pilot program, more carriers would be needed to achieve the desired target level of inspections. Conversely, if participating carriers have more crossings per week, or more vehicles enrolled, fewer carriers would be needed. Table 2 below provides estimates for the number of carriers needed to participate in the pilot, in order to achieve an inspection target of 4,100 inspections within 3 years:

TABLE 2—NUMBER OF PILOT PROGRAM CARRIERS REQUIRED TO ACHIEVE A TARGET OF 4,100 INSPECTIONS, BY VEHICLES ENROLLED PER CARRIER AND CROSSINGS PER WEEK PER CARRIER

Average Number Enrolled Vehicles	Average number of carrier crossings per week			
	0.5	1	2	3
1	182	91	46	30
2	91	46	.....	.....
3	61	30	.....	.....
4	46	.....	.....	.....
5	36	.....	.....	.....

The Agency recognizes that the stipulated number of carriers needed for this analysis is lower than the target sample size originally cited for the previous demonstration project. A lower number of carriers will be needed in this program for two reasons. First, the target sample size stipulated for the earlier demonstration project was based on an effort to estimate differences in crash rates between U.S. carriers and program participants. Sample size requirements for estimating differences in crash rates are difficult to determine because the exposure (*i.e.,* vehicle miles traveled) for the program participants, as well as the variability in this exposure, is unknown. Moreover, crashes are, in fact, rare events, and it is not likely that many, if any, will be recorded during this current effort. For these reasons, the current study focuses on measuring safety performance primarily in terms of violation rates. When estimating violation rates, the sampling unit is an inspection, rather than a carrier. The number of required carriers stipulated herein is merely an estimate of the number of carriers needed to achieve the target level of inspections.

It is also noted that this pilot program would run for up to 3 years, rather than the one and a half year duration of the demonstration project. As a result, it is anticipated that there may be more data collected from the participating carriers.

The Agency does not know how many Mexico-domiciled carriers are interested in taking advantage of the cross-border long-haul provisions of NAFTA and capable of satisfactorily completing a PASA and security screening. Currently, there are approximately 6,900 Mexican carriers operating strictly within the border commercial zones as well as approximately 1,000 U.S.-wned "certificate" carriers domiciled in Mexico and having limited operating authority in the United States. Although it is conceivable that a large number of these carriers would be interested in taking advantage of the NAFTA cross border provisions, and qualified to do so, based on experience to date, such a level of participation is not anticipated. In the 2007 demonstration project, for example, there were 775 initial applicants, of which only 29, or 4%, completed all of the required paperwork and passed the required vetting process. Based on this data, one might set an upper limit on the total number of Mexico-domiciled carriers both capable of and interested in taking advantage of the NAFTA cross-border long-haul provision at 316 carriers ($.04 \times 7{,}900$).

Representativeness of Data from the Pilot Study

If this pilot program demonstrates that Mexico-domiciled carriers are as safe as the average U.S. domiciled carrier, FMCSA would expect to use the same application and screening process for post-pilot program Mexico-domiciled carriers seeking long haul authority. Thus, carriers participating in the pilot program would be representative of carriers seeking and receiving such authority in the future.

It has also been argued that using roadside inspection data to compare carriers domiciled in the United States with Mexico-domiciled carriers participating in the pilot program is not valid because inspections performed on U.S. carriers are targeted. That is, inspectors often use recommendations generated from computer software, or perform a cursory visual inspection of the vehicle, to determine which vehicles to inspect. Hence these roadside inspections are not truly random, and violation rates (such as out-of-service rates) generated from such data are biased. Studies completed more than 15 years ago suggested that this bias in U.S. carrier out-of-service rates is minimal. To assess if such a bias currently exists, and to determine its extent, the Agency would concurrently conduct a study of U.S. carrier violation rates, using inspection data collected on a random basis from U.S. carriers for a 2-week period during the course of the pilot program.

Independent Data

FMCSA plans to conduct an independent analysis of data collected from the 4 currently active Mexican carriers with "grandfathered," pre-1982 operating authority in the United States, the 501 Mexican-owned carriers with current operating authority as a result of being domiciled in the United States, and the 1336 Mexico-domiciled private and exempt motor carriers that received a certificate of registration to operate beyond the commercial zones between 1988 and 2002. A separate analysis of these carriers' safety performance would be conducted to supplement the analysis of the carriers operating under the pilot program.

Request for Comments

FMCSA requests public comment from all interested persons on the pilot program outlined in this notice. The Agency intends the pilot program to be the means of validating its safety oversight regime for a cross-border long-haul trucking program.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Section 6901(b)(2)(B) of the U.S. Troop Readiness, Veterans' Care, Katrina recovery, and Iraq Accountability Appropriations Act, 2007, provides that FMCSA must request public comment on five specific aspects of the pilot program. For the convenience of the reader, these items are listed below. A complete copy of

section 6901 is included in the docket for this notice.

1. Comprehensive data and information on the pre-authorization safety audits conducted before and after the date of enactment of this Act of motor carriers domiciled in Mexico that are granted authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border;

2. Specific measures to be required to protect the health and safety of the public, including enforcement measures and penalties for noncompliance;

3. Specific measures to be required to ensure compliance with section 391.11(b)(2) of title 49, CFR, concerning FMCSA's English language proficiency requirement, and section 365.501(b) of title 49, CFR, concerning FMCSA's prohibition against Mexico-domiciled drivers engaging in the transportation of domestic freight within the U.S.;

4. Specific standards to be used to evaluate the pilot program and compare any change in the level of motor carrier safety as a result of the pilot program; and

5. A list of Federal motor carrier safety laws and regulations, including the commercial driver's license requirements, for which the Secretary of Transportation will accept compliance with a corresponding Mexican law or regulation as the equivalent to compliance with the United States law or regulation, including for each law or regulation an analysis as to how the corresponding United States and Mexican laws and regulations differ.

Issued on: April 8, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–8846 Filed 4–8–11; 2:00 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–1075X]

Manufacturers Railway Company—Discontinuance Exemption—in St. Louis County, MO

On March 24, 2011, Manufacturers Railway Company (MRS) [1] filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over all tracks and yards located within the area bordered by Cedar Street on the north to Zepp Street on the south; and Mississippi River flood wall on the east to U.S. Interstate 55 on the west, in St. Louis, Mo. The lines traverse U.S. Postal Service Zip Code 63118. MRS intends to discontinue service over its lines but does not intend, at this point, to remove the trackage or rail assets comprising the lines.

According to MRS, the lines do not contain any Federally granted rights-of-way. Any documentation in MRS's possession will be made available promptly to those requesting it.

MRS asserts that, because its petition seeks discontinuance covering MRS's entire rail system and because MRS has no corporate affiliate that will continue substantially similar rail operations or a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad, labor protective conditions should not be imposed. MRS requests that the Board follow its established practice regarding labor conditions in entire system discontinuances. The United Transportation Union, the Brotherhood of Maintenance of Way Employes Division-International Brotherhood of Teamsters, and the International Association of Machinists and Aerospace Workers have filed separate statements or comments in opposition to the petition, asserting that affected employees are entitled to labor protection. The Board will consider and address comments on the petition, including comments regarding labor protection, in its final decision on the merits.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 12, 2011.

Because this is a discontinuance proceeding and not an abandonment, OFAs to purchase the line for continued rail service are not appropriate. Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

Because this is a discontinuance proceeding and not an abandonment, a trail use/rail banking condition, under 16 U.S.C. 1247(d), and a public use condition, under 49 U.S.C. 10905, are not appropriate. Additionally, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

All filings in response to this notice must refer to Docket No. AB–1075X, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Paul A. Cunningham, Harkins Cunningham LLP, 1700 K Street, NW., Suite 400, Washington, DC 20006–3804. Replies to the petition are due on or before May 3, 2011.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 8, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–8863 Filed 4–12–11; 8:45 am]

BILLING CODE 4915–01–P

[1] MRS is owned by Anheuser-Busch Companies, Inc.

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on May 3, 2011 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct at working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(D) and vested me by Treasury Department Order No. 101–05, that the meeting will consist of

discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 522b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 522b(c)(1)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus this meeting falls within the exemption covered by 5 U.S.C. 522b(c)(1)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: April 7, 2011.

Mary Miller,

Assistant Secretary, Financial Markets.

[FR Doc. 2011–8759 Filed 4–12–11; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application and Termination Notice for Municipal Securities Dealer Principal or Representative

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

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

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Judith McCormick (202) 906–5636, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application and Termination Notice for Municipal Securities Dealer Principal or Representative.

OMB Number: 1550–0123.

Form Numbers: MSD–5 and MSD–4.

Description: Section 15B(a)(2) of the Securities Exchange Act of 1934 (Act) requires, in part, that municipal securities dealers notify their appropriate regulatory agency (ARA) of their activities. This information is required to satisfy the requirements of the Act. The Financial Services Regulatory Relief Act of 2006 provides for the inclusion of the OTS in the definition of an ARA for Federal savings associations (FSA's).

The forms are completed by certain FSA employees that act as municipal securities dealer principals or representatives, and are submitted to OTS. OTS reviews the information to monitor registered persons' entry into, and exit from, municipal securities dealer activities. The information contributes to the OTS's understanding of the FSA and helps to facilitate the supervision of the municipal securities dealer activities.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 14.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 11 hours.

Dated: April 8, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–8987 Filed 4–12–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0662]

Proposed Information Collection (Civil Rights Discrimination Complaint); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process a claimant's civil rights discrimination complaint.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 13, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0662" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Civil Rights Discrimination Complaint, VA Form 10–0381.

OMB Control Number: 2900–0662.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other VHA customers who believe that their civil rights were violated by agency employees while receiving medical care or services in VA medical centers, or institutions such as state homes receiving federal financial assistance from VA, complete VA Form 10–0381 to file a formal complaint of the alleged discrimination.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 46 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 183.

Dated: April 8, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–8899 Filed 4–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Proposed Information Collection (Disabled Veterans Application for Vocational Rehabilitation) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for vocational rehabilitation benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 13, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0009" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Disabled Veterans Application for Vocational Rehabilitation (Chapter 31, Title 38 U.S.C), VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1900 is completed by Veterans with a combined service-connected disability rating of ten percent or more and awaiting discharge for such disability to apply for vocational rehabilitation benefits. VA provides service and assistance to veterans with disabilities, who have an entitlement determination, to gain and keep suitable employment. Vocational rehabilitation also provides service to support veterans with disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,961 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 67,844.

Dated: April 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–8901 Filed 4–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0715]

Proposed Information Collection (Servicer's Staff Appraisal Reviewer (SAR) Application) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to nominate servicer appraisal employee as a staff appraisal reviewer.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 13, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0715" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Servicer's Staff Appraisal Reviewer (SAR) Application, VA Form 26–0829.

OMB Control Number: 2900–0715.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–0829 is completed by servicers to nominate employees for approval as Staff Appraisal Reviewer (SAR). Servicers SAR's will have the authority to review real estate appraisals and to issue liquidation notices of value on behalf of VA. VA will also use the data collected to track the location of SARs when there is a change in employment.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 2 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20.

Dated: April 8, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–8903 Filed 4–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Proposed Information Collection (Living Will and Durable Power of Attorney for Health Care) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to record patient's specific instructions about health care decisions in the event he or she is no longer has decision-making capability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 13, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0556" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of

Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants admitted to a VA medical facility complete VA Form 10–0137 to appoint a health care agent to make decision about his or her medical treatment and to record specific instructions about their treatment preferences in the event they no longer can express their preferred treatment. VA's health care professionals use the data collected to carry out the claimant's wish.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 171,811 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 343,622.

Dated: April 8, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–8898 Filed 4–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VOV)]

Agency Information Collection (Veterans Benefits Administration (VBA) Voice of the Veteran (VOV) Pilot Surveys); Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (VOV)" in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail: *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–New (VOV)."

SUPPLEMENTARY INFORMATION: *Title:* Veterans Benefits Administration (VBA) Voice of the Veteran (VOV) Pilot Surveys.

a. Compensation and Pension (C&P) Service Surveys.

J.D. Power will be pilot testing three survey instruments for the Compensation and Pension (C&P) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with C&P into two categories—Enrollment in a Benefit and Servicing of a Benefit. There will be one survey instrument for the Enrollment category that will be used for both compensation and pension claimants; compensation beneficiaries and pension beneficiaries will receive separate Servicing instruments. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaires will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot C&P Enrollment questionnaire will include individuals who have received a decision on a compensation or pension benefit claim within 30 days prior to the fielding period. The sample will be stratified as follows: (1) Type of benefit (*i.e.,* Compensation, Pension) (2) claimants who were found eligible (3) claimants who were found ineligible and are not appealing their claim. The survey pool for the pilot Compensation servicing questionnaire will include individuals who have been receiving compensation benefits for at least 6 months or individuals who received a decision on a compensation claim 6–18 months prior to the field period. The sample will be stratified as follows: (1) Individuals who were granted a decision, are receiving benefits and not appealing their benefit, (2) individuals who were granted a decision, are receiving benefits and are appealing their benefit, (3) individuals who were denied benefits and are appealing (4) individuals who were denied benefits and are not appealing. The survey pool for the pilot Pension servicing questionnaire will include individuals who have been receiving pension benefits for at least 6 months or individuals who received a decision on a pension claim 6–18 months prior to the field period. The sample will be stratified as follows: (1) Individuals who were granted a decision, are receiving benefits and not appealing their benefit, (2) individuals who were granted a decision, are receiving benefits and are appealing for additional special benefits *(i.e.,* Aid and Attendance, Housebound), (3) individuals who were denied benefits and are appealing.

b. Education (EDU) Service Surveys.

J.D. Power will be pilot testing two survey instruments for the Education (EDU) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Education into two categories—Enrollment in a Benefit and Servicing of a Benefit. There will be one survey instrument for the Enrollment category and one survey instrument for the Servicing category. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaire will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an

evaluation of the levels of non-response for each question.

The survey pool for the pilot Education Enrollment questionnaire will include individuals who have received a decision on their education benefit application within 90 days (i.e., the original end-product has been cleared within the past 90 days) prior to the fielding period. The sample will be stratified as follows: (1) Accepted and enrolled, (2) accepted and not enrolled, (3) denied. The survey pool for the pilot Education Servicing questionnaire will include beneficiaries who have been enrolled and receiving education benefit payments for at least 2 consecutive school terms prior to the fielding period.

c. Loan Guaranty (LGY) Service Surveys.

J.D. Power will be pilot testing two survey instruments for the Loan Guaranty (LGY) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Loan Guaranty into two categories—Home Loan Enrollment and Processing, and Specially Adapted Housing Servicing (Assessment and Grant Process). There will be one survey instrument for the Home Loan category, and one survey instrument for the Specially Adapted Housing category. The Home Loan Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. Additionally, the Home Loan questionnaire will address areas specific to the Loan Process. The Specially Adapted Housing Servicing questionnaire will include the same factors as Home Loan, but will address the grant process rather than the loan process. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot LGY Enrollment questionnaire will include individuals who closed a VA home loan in the 30 days prior to the fielding period. The sample will be stratified as follows: (1) Those who closed on purchase loans, (2) those who received loans for interest rate reductions, and (2) those who obtained cash out or other refinancing. The survey pool for the pilot SAH servicing questionnaire will include individuals who are eligible for a specially adapted housing grant in FY 2009. The sample will be stratified as follows: (1) Those who have not yet applied, (2) those who have applied but have not yet received a decision, (3) those who have received an approval on their grant and are currently somewhere in post-approval, (4) those who have had all their funds disbursed and final accounting is not yet complete, and (5) those who have had all of their funds disbursed and final accounting is complete.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys.

J.D. Power will be pilot testing three survey instruments for the Vocational Rehabilitation and Employment (VR&E) Service line of business. Based on the numerous interviews conducted, JDPA has separated the Veterans experience with Education into three categories—Enrollment in a Benefit, Servicing of a Benefit, and Escaped Beneficiaries. There will be one survey instrument for the Enrollment category, one survey instrument for the Servicing category, and one survey instrument for the Escaped Beneficiary category. The Enrollment questionnaire will include factors relating to benefit eligibility and the application process, benefit entitlement, benefit information, and VA personnel. The Servicing questionnaire will include the same factors as Enrollment, with the exception of benefit eligibility and the application process factor. The Escaped Beneficiary questionnaire will include similar factors to Enrollment and Servicing, however, the questionnaire will address the experience that is unique to potential beneficiaries who applied for the benefit but decided not to pursue the benefit or services provided, including the reasons why they chose not to continue with the benefit application process or the VR&E program. The results of the pilot test will be used to examine the effectiveness and reliability of the survey instrument, including an evaluation of the levels of non-response for each question.

The survey pool for the pilot VR&E Enrollment questionnaire will include individuals who had an initial meeting with their VR&E counselor and were granted a decision regarding their entitlement in the past 60 days prior to the fielding period. The sample will be stratified as follows: (1) Those who applied, showed up for an initial appointment, were found entitled to and decided to pursue the program, (2) those who applied, showed up for an initial appointment, were found entitled to and decided not to pursue the program, (3) those who applied, showed up for an initial appointment and were not found entitled to the program. The survey pool for the pilot VR&E Servicing questionnaire will include individuals who have entered and been enrolled in one of the five tracks for at least 60 days prior to the fielding period. The sample will be stratified as follows: (1) Veterans who are currently participating, (2) Veterans who have been rehabilitated, (3) Veterans who did not fully complete program (negative closures), and (4) Veterans who have reached maximum rehabilitation gain and could not proceed in program. The survey pool for the pilot VR&E Escaped Beneficiary questionnaire will include individuals who dropped out of the program prior to completing a rehabilitation plan. The sample will be stratified as follows: (1) Applicants who never attended the initial meeting with a counselor, (2) applicants who were determined to be entitled and did not complete a rehabilitation plan, and (3) applicants who started, but did not complete rehabilitation (*i.e.,* negative closures).

OMB Control Number: 2900–New (VOV).

Type of Review: New collection.

Abstract: In 2008, VBA recognized a need to develop and design an integrated, comprehensive Voice of the Veteran (VOV) measurement program for their lines of business. This continuous measurement program will help VBA understand what is important to Veterans relative to VBA services and will provide VA/VBA leadership with actionable and timely customer feedback on how VBA is performing against those metrics. Insights will help identify opportunities for improvement and measure the impact of improvement initiatives.

The program started with numerous interviews with stakeholders at various levels within the VBA organization and Veterans Service Organizations to identify information needs and perceived gaps in current processes. Surveys are designed to address those needs.

VBA has engaged J.D. Power and Associates to conduct this survey initiative. The questionnaires are drafted in accordance with the J.D. Power and Associates Index Model—the cornerstone of all proprietary and syndicated research studies conducted by J.D. Power. The model will allow J.D. Power to quantify, based on the survey data, what is most important and least important with regard to satisfying our nation's Veterans.

All survey instruments for each line of business, Compensation and Pension Service, Education Service, Vocational Rehabilitation and Employment Service, and Loan Guaranty Service, will contain common factors to allow VBA to compare scores across lines of business. In addition, JDPA will be in a position to provide VBA with an Overall Satisfaction score for their experience across all benefits provided by VBA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 24, 2011, at pages 4152–4153.

Affected Public: Individuals and Households.

Estimated Annual Burden:

a. Compensation and Pension (C&P) Service Surveys—3,000 hours.

b. Education (EDU) Service Surveys—1,500 hours.

c. Loan Guaranty (LGY) Service Surveys—1,125 hours.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys—1,875 Hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. Compensation and Pension (C&P) Service Surveys—12,000.

b. Education (EDU) Service Surveys—6,000.

c. Loan Guaranty (LGY) Service Surveys—4,500.

d. Vocational Rehabilitation and Employment (VR&E) Service Surveys—7,500.

Dated: April 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–8902 Filed 4–12–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 71 April 13, 2011

Part II

The President

Federal Register
Vol. 76, No. 71
Wednesday, April 13, 2011

Presidential Documents

Title 3—

The President

Proclamation 8650 of April 8, 2011

National Crime Victims' Rights Week, 2011

By the President of the United States of America

A Proclamation

Though our homes and neighborhoods are safer than they have been in decades, millions of Americans still become victims of crime each year. For many citizens, a sense of security remains painfully elusive, and we must continue to fight crime wherever it exists.

During National Crime Victims' Rights Week, we renew our commitment to assisting those who have been victimized by crime and supporting those who help survivors rebuild their lives. Crisis counselors, law enforcement professionals, legal advocates, safe haven staff, and other service providers help victims meet basic needs and find renewed hope for their future.

My Administration remains focused on advancing the progress made in preventing crime and enforcing the rights of its survivors. We have shined a light on hidden crimes like cyberbullying, online child sexual exploitation, and sexual assault on college campuses. Through the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, we are coordinating efforts to address this heinous offense and support its victims. The Tribal Law and Order Act I signed into law last year gives Native communities new tools to fight crime and greater resources to assist American Indian and Alaska Native women who have been the victims of sexual assault or domestic abuse.

To avoid the recurrence of another financial crisis, we are also working to prevent and prosecute financial crimes. My Administration's Financial Fraud Enforcement Task Force helps combat fraud and restore losses suffered by individuals affected by predatory lending, mortgage fraud, and other deceptive financial practices.

For assistance, resources, or additional information, Americans can visit: www.CrimeVictims.gov. As we commemorate National Crime Victims' Rights Week, we reaffirm our pledge to join in supporting crime victims and creating safer communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 10 through April 16, 2011, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services and by volunteering to serve victims in their time of need.

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

[FR Doc. 2011–9142
Filed 4–12–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8651 of April 8, 2011

Pan American Day and Pan American Week, 2011

By the President of the United States of America

A Proclamation

Throughout Pan American Day and Pan American Week, we celebrate the close partnerships across our hemisphere that advance the ability of our citizens to enjoy freedom and reach for their highest aspirations. Every day, the future is being forged by the countries and peoples of the Americas. The world must now recognize the Americas as a whole as a dynamic and growing region, because the Americas are democratic and at peace, and we are coming together to address shared challenges. Increasingly, our hemisphere is contributing to global prosperity and security. The bonds between our people are rooted not only in mutual respect and shared interests and responsibilities, but also in common values. As the nations of the Americas continue to grow, progress, and address the challenges of our day, our friendships will be more important than ever to attaining and maintaining security and prosperity for all.

This year, the Americas can celebrate milestones that have strengthened the ties between our societies. More than 60 years ago, our nations came together in an Organization of American States and declared that "representative democracy is an indispensable condition for the stability, peace, and development of the region." A decade ago, we reaffirmed this principle, with an Inter-American Democratic Charter that stated "the people of the Americas have a right to democracy and their governments have an obligation to promote and defend it." This year, we also observe the United Nations' and the Organization of American States' designation of 2011 as the International Year for People of African Descent, an opportunity to recognize the myriad ways that men and women of African descent have strengthened our countries and enriched our societies.

The Americas demonstrate to countries around the world the strength of democracy as a means of supporting people's yearnings for freedom and the pursuit of happiness, but we know our work is far from finished. Many citizens in our region live in poverty or lack access to jobs and economic opportunity, and some suffer injustice and human rights violations, including freedom of expression. In Haiti and in other places where natural disasters have struck, many lack access to basic necessities. As we come together to build our economies, increase cooperation on citizen security and trade, and promote democracy, we know our friendships, partnerships, and shared principles will help us overcome today's challenges and build a safer and more prosperous future.

As we celebrate Pan American Day and Pan American Week, let us reemphasize the cooperation between all nations of the Americas as a vital part of our interconnected world. Together, we will continue to build on our partnerships of equality and shared responsibility and demonstrate that change is possible, every nation can be free, and there can be no denying the dignity and human rights our countries uphold.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2011, as Pan American Day and April 10 through April 16, 2011, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

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

[FR Doc. 2011–9143
Filed 4–12–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8652 of April 8, 2011

National Former Prisoner of War Recognition Day, 2011

By the President of the United States of America

A Proclamation

The men and women of the United States Armed Forces have faced innumerable challenges while dedicating their lives to the defense of our liberties. Contending with perilous combat zones, deployment overseas, and long absences from home, generations of service members have answered America's call in its hour of need. On National Former Prisoner of War Recognition Day, a grateful Nation acknowledges a debt that can never be repaid and honors those who faced the most unfathomable of challenges with the utmost bravery and conviction.

We pay solemn tribute to those American sons and daughters who have endured unimaginable hardship at the hands of foreign captors. Often faced with deplorable physical and mental treatment, the tremendous personal sacrifice of these warriors exemplifies the highest of ideals—honor, duty, and selfless service. We also pay tribute to the families and friends of these service members, who embody the same qualities of bravery and sacrifice exhibited by their loved ones, and bear a burden silently measured in sleepless nights and missed birthdays.

America cherishes those veterans who have returned home after imprisonment on foreign soil. We remain dedicated to fulfilling the sacred trust to care for all who have borne the battle. This day and every day, each of these heroes holds a special place of honor in our hearts and the well-earned support of a thankful Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2011, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day of remembrance by honoring our service members, veterans, and all American prisoners of war. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

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

[FR Doc. 2011–9146
Filed 4–12–11; 11:15 am]
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